



Western Australia

Minerals Research Institute of Western Australia Act 2013

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Minerals Research Institute of Western Australia Act 2013

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Western Australia

Minerals Research Institute of Western Australia Act 2013

An Act —

- **to establish the Minerals Research Institute of Western Australia for the purposes of fostering and promoting minerals research for the benefit of the State; and**
- **to repeal the *Minerals and Energy Research Act 1987*; and**
- **to amend certain other Acts as a consequence of this Act, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Minerals Research Institute of Western Australia Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

Account means the account referred to in section 67(1);

advisory committee means an advisory committee appointed under section 60(1);

board means the Institute's board provided for in section 26(1);

CEO means the chief executive officer of the Institute referred to in section 48(1);

chairperson means the person designated under section 28(1) as the chairperson of the board;

Institute means the Minerals Research Institute of Western Australia established under section 4(1);

member means a member of the board;

mineral means —

- (a) a naturally occurring inorganic substance that is extracted or extractable from the earth and has characteristic chemical composition and physical properties; or

- (b) an aggregate of one or more substances referred to in paragraph (a); or
- (c) coal or a similar naturally occurring organic substance that is extracted or extractable from the earth, other than petroleum or any hydrocarbon;

minerals research means —

- (a) investigation undertaken in order to acquire new knowledge relating to; or
- (b) systematic work drawing on existing knowledge that is directed to the development of,

any process, technique, method, design or apparatus to locate, extract, transport or market minerals;

staff member means the CEO or a person referred to in section 58 or 59.

Part 2 — Minerals Research Institute of Western Australia

Division 1 — Minerals Research Institute of Western Australia

4. Institute established

- (1) The Minerals Research Institute of Western Australia is established.
- (2) The Institute —
 - (a) is a body corporate; and
 - (b) has perpetual succession; and
 - (c) has a common seal; and
 - (d) may sue and be sued in its corporate name.

5. Institute to be State agency

The Institute is an agent of the State and has the status, immunities and privileges of the State.

Division 2 — Functions

6. Institute's functions

For the purposes of fostering and promoting minerals research for the benefit of the State, the Institute has the functions set out in this Division.

7. Undertaking, procuring and managing minerals research projects

It is a function of the Institute to undertake, procure or manage such minerals research projects as it thinks fit.

8. Providing financial assistance for minerals research and other activities

- (1) It is a function of the Institute to provide financial assistance to persons to enable them to undertake or participate in, or to engage or enable other persons to undertake or participate in, minerals research or any other activity relevant to the Institute's functions.
- (2) The Institute may provide financial assistance only in accordance with Part 3.

9. Keeping records about minerals research projects

- (1) The Institute must cause detailed records to be kept about each minerals research project —
 - (a) it has undertaken, procured or managed either on its own or in conjunction with any other person; or
 - (b) for which it has provided financial assistance.
- (2) The records in respect of each minerals research project must include records of —
 - (a) the amount and nature of financial assistance that the Institute has provided for the project and to whom the financial assistance has been provided; and
 - (b) the work done in relation to the project; and
 - (c) the outputs of the project and how they relate to the knowledge and technology needs of the State's minerals industry identified in the Institute's research priority plan referred to in section 14.

10. Other functions

The Institute also has these functions —

- (a) to confer and collaborate on matters relating to minerals research with other persons, authorities and institutions;

- (b) to maintain current knowledge of minerals research being undertaken within the State and elsewhere;
- (c) to promote public awareness of, and foster public interest in, matters relating to minerals research;
- (d) to foster academic activities relevant to the Institute's functions;
- (e) to provide the Minister with advice in relation to minerals research;
- (f) any other function prescribed by regulations.

Division 3 — Powers

11. Institute's powers

- (1) In this section —

business arrangement means a company, a partnership, a trust, a joint venture or any other business arrangement;

participate includes form, promote, establish, enter into, manage, dissolve, wind-up and do anything incidental to the doing of those things;

public authority means any of the following —

- (a) a Minister of the State;
 - (b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1);
 - (c) a local government or regional local government;
 - (d) a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State.
- (2) The Institute has all the powers it needs to perform its functions.
- (3) Without limiting subsection (2), the Institute may —

- (a) participate in a business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
 - (b) enter into arrangements for sponsorship; and
 - (c) develop and turn to account any technology, software, resource or intellectual property and, for that purpose, apply for, hold, receive, exploit and dispose of any intellectual property; and
 - (d) use its expertise and resources to provide consultancy, management, advisory or other services for profit.
- (4) The Institute, in performing its functions, may act alone or in conjunction with —
- (a) any person or public authority; or
 - (b) any other government agency or instrumentality of the Commonwealth.

12. Minister and Treasurer to consider proposals under section 11(3)(a)

- (1) The Institute must obtain the written agreement of the Minister before it exercises any power conferred by section 11(3)(a).
- (2) The Minister must obtain the Treasurer's approval before giving a written agreement under subsection (1).

13. Delegation

- (1) The Institute may delegate to a staff member any power or duty of the Institute under another provision of this Act.
- (2) The delegation must be in writing executed by the Institute.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Institute to perform a function through a staff member or an agent.

Division 4 — Research priority plan

14. Research priority plan

The Institute is to have a research priority plan that identifies and prioritises the medium to long term knowledge and technology needs of the State's minerals industry.

15. Revised research priority plans

The Institute may revise its research priority plan but only if it has —

- (a) prepared a proposed revised research priority plan (the *proposed revised plan*); and
 - (b) published the proposed revised plan; and
 - (c) published a notice —
 - (i) stating that it proposes to revise its research priority plan; and
 - (ii) stating that it has published the proposed revised plan and how it may be accessed by the public; and
 - (iii) inviting written submissions about the proposed revised plan to be made to the Institute within the period specified in the notice (which must be at least 30 days after the notice is published);
- and
- (d) considered any submissions about the proposed revised plan made in accordance with the notice.

16. Minister to be given research priority plan

The Institute must give the Minister a copy of —

- (a) its research priority plan; and
- (b) any revised research priority plan.

17. Research priority plan to be published

The Institute must ensure that its research priority plan, as revised from time to time, is published.

18. Effect of research priority plan

The Institute must have regard to its research priority plan, as revised from time to time, when performing its functions.

Part 3 — Financial assistance

19. Applying for financial assistance

- (1) A person may apply to the Institute for financial assistance to enable the person to undertake or participate in, or to engage or enable another person to undertake or participate in, minerals research or any other activity relevant to the Institute's functions.
- (2) An application under subsection (1) must —
 - (a) be in the form approved by the CEO; and
 - (b) be accompanied by the prescribed fee (if any).
- (3) The Institute may require any information provided with an application under subsection (1) to be verified by a statutory declaration.

20. Institute may provide financial assistance

- (1) On an application under section 19(1), the Institute may —
 - (a) provide to the applicant an amount of financial assistance specified by the Institute; or
 - (b) refuse the application.
- (2) The Institute may provide financial assistance whether or not an application is made under section 19(1).
- (3) The Institute may impose such terms and conditions as it thinks fit in relation to financial assistance provided under this Act.

21. Institute may require information

- (1) The Institute may, by written notice given to a person to whom it has provided financial assistance, require the person to provide to the Institute, within the period specified in the notice, any information relating to —
 - (a) any minerals research or other activity for which the financial assistance was provided; or

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- (b) the financial assistance provided to the person.
- (2) A notice under subsection (1) must specify the information to be provided and the period within which it must be provided.
- (3) The Institute may require any information provided in response to a notice under subsection (1) to be verified by a statutory declaration.
- (4) A person given a notice under subsection (1) must comply with it.
Penalty: a fine of \$20 000.

22. False or misleading information

- (1) A person must not do any of the things set out in subsection (2) —
 - (a) in relation to an application under section 19(1); or
 - (b) in response to a notice under section 21(1).Penalty: a fine of \$20 000.
- (2) The things to which subsection (1) applies are —
 - (a) making a statement which the person knows is false or misleading in a material particular; or
 - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
 - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
 - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

23. Institute may terminate financial assistance

- (1) In this section —
specified, in relation to a notice, means specified in the notice.
- (2) The Institute may, by written notice given to a person to whom it has provided financial assistance, terminate the financial assistance if the person is convicted of an offence under this Act.
- (3) The Institute may, by written notice given to a person to whom it has provided financial assistance, terminate the financial assistance if it is satisfied that the person —
- (a) has failed to comply with —
 - (i) a provision of this Act; or
 - (ii) a term or condition imposed by the Institute in relation to the financial assistance;
 - or
 - (b) is unable to undertake or complete the minerals research or other activity for which the financial assistance was provided.
- (4) Before giving a person a notice under subsection (3), the Institute must —
- (a) give the person written notice of the proposal to terminate the financial assistance and the reasons for it; and
 - (b) advise the person that the person may within the specified period (which must be at least 14 days after the notice is received) make written submissions to the Institute as to why the financial assistance should not be terminated; and
 - (c) consider any submissions made in accordance with the notice.

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- (5) If the Institute gives a person a notice under subsection (2) or (3) the person must return to the Institute the specified amount within the specified period.
- (6) Any amount not returned in accordance with subsection (5) is recoverable in a court of competent jurisdiction as a debt due to the Institute.

24. Review of decision to terminate financial assistance

A person aggrieved by a decision under section 23(3) to terminate financial assistance may apply to the State Administrative Tribunal for a review of the decision.

Part 4 — Administration

Division 1 — The board

Subdivision 1 — How board is constituted

25. Terms used

In this Subdivision —

deputy chairperson means the person designated under section 28(1) as the deputy chairperson of the board;

unable to act means unable to act as a member for any reason, including —

- (a) illness; and
- (b) absence; and
- (c) the operation of section 44(1).

26. Board is governing body

- (1) The Institute is to have a board.
- (2) The board is the governing body of the Institute and, in the name of the Institute, is to perform the Institute's functions.

27. Board membership

- (1) The board is to consist of 7 members appointed by the Minister, of whom —
 - (a) at least one is to have recent or current experience in the minerals industry; and
 - (b) at least one is to have recent or current experience in the minerals research sector or any other research sector; and
 - (c) one is to be nominated by the chief executive officer of the department principally assisting in the administration of the *Mining Act 1978*; and

- (d) each other member is to have knowledge of, and experience in, a field that is, in the opinion of the Minister, relevant to the Institute's functions.
- (2) The CEO is not eligible to be appointed as a member of the board.

28. Chairperson and deputy chairperson

- (1) The Minister must designate one member to be the chairperson of the board and another to be the deputy chairperson of the board.
- (2) If the chairperson is unable to act or if there is no chairperson, the deputy chairperson is to act in the chairperson's place.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.

29. Term of office

- (1) A member holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.
- (2) A member is eligible for reappointment but cannot hold office for more than 9 consecutive years.

30. Casual vacancies

- (1) In this section —
misconduct includes conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of the office.
- (2) The office of a member becomes vacant if the member —
 - (a) dies, resigns or is removed from office under this section; or

- (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under section 43(1).
- (3) A member may at any time resign from office by written notice given to the Minister.
- (4) The Minister may remove a member from office on the grounds of —
- (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) absence, without leave, from 3 consecutive meetings of the board of which the member has had notice.

31. Extension of term of office during vacancy

- (1) If the office of a member becomes vacant because the member's term of office expires by effluxion of time, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) Subsection (1) ceases to apply if the member resigns or is removed from office under section 30.
- (3) The maximum period for which a member is taken to continue to be a member under this section after the member's term of office expires is 3 months.

32. Leave of absence

The board may, on any terms and conditions it thinks fit, grant a member leave to be absent from office.

33. Alternate members

- (1) If a member other than the chairperson is unable to act, the Minister may appoint another person as an alternate member to act temporarily in the member's place.
- (2) If the deputy chairperson is unable to act in the chairperson's place at a meeting —
 - (a) the members present may elect one of their number to act as chairperson; and
 - (b) subsection (1) applies as if the member elected were absent from the meeting.
- (3) While acting in accordance with the appointment, the alternate member is taken to be, and to have any entitlement of, a member.
- (4) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

34. Remuneration and allowances

- (1) Members are entitled to be paid out of the funds of the Institute any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975*, if that Act applies to the member.

Subdivision 2 — Board meetings

35. Holding meetings

- (1) The first meeting of the board is to be convened by its chairperson, and subsequent meetings are to be held at times and places determined by the board.
- (2) The board is to meet at least 3 times a year.

36. Quorum

Four members constitute a quorum.

37. Presiding member

The chairperson is to preside at a meeting of the board.

38. Procedure at meetings

The board is to determine its own meeting procedures to the extent that they are not fixed by this Act.

39. Holding meetings remotely

The presence of a person at a meeting of the board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

40. Voting

- (1) At a meeting of the board, each member present has a deliberative vote unless section 44 prevents the member from voting.
- (2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (3) A question is resolved by a majority of the votes cast.

41. Resolution without meeting

A resolution in writing signed or otherwise assented to in writing by each member has the same effect as if it had been passed at a meeting of the board.

42. Minutes to be kept

The board must keep accurate minutes of its meetings.

Subdivision 3 — Disclosure of interests

43. Disclosure of material personal interest

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: a fine of \$10 000.

- (2) A disclosure under this section is to be recorded in the minutes of the meeting.

44. Voting by interested member

- (1) A member who has a material personal interest in a matter that is being considered by the board —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.
- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 45 in respect of the matter, whether relating to that member or a different member.

45. Section 44 may be declared inapplicable

Section 44 does not apply if —

- (a) a member has disclosed under section 43 an interest in a matter; and
- (b) the board has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

46. Quorum where section 45 applies

- (1) Despite section 36, if a member is disqualified under section 44 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter to the extent that the board cannot deal with it because of subsection (1).

Subdivision 4 — Execution of documents

47. Execution of documents

- (1) A document is duly executed by the Institute if the common seal of the Institute is affixed to it in accordance with subsections (2) and (3).
- (2) The common seal of the Institute is not to be affixed to any document except as authorised by the Institute.

- (3) The common seal of the Institute is to be affixed to a document in the presence of any 2 members, each of whom is to sign the document to attest the common seal was so affixed.
- (4) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Institute, it is to be presumed that the seal is the common seal of the Institute unless the contrary is shown.

Division 2 — Staff

Subdivision 1 — CEO generally

48. CEO

- (1) There is to be a chief executive officer of the Institute.
- (2) The CEO is to administer the day-to-day operations of the Institute subject to the control of the board.

49. Effect of Institute being SES organisation

While the Institute is an SES organisation under the *Public Sector Management Act 1994*, the CEO is —

- (a) its chief executive officer under that Act; or
- (b) if section 44(2) of that Act applies, its chief employee under that Act.

50. Effect of Institute becoming non-SES organisation

If the Institute becomes a non-SES organisation under the *Public Sector Management Act 1994*, the CEO is to be its chief employee under that Act.

51. Appointment of CEO

- (1) If section 49(a) applies, the CEO is to be appointed and hold office under the *Public Sector Management Act 1994* Part 3.
- (2) If section 49(b) or 50 applies —
 - (a) the CEO is to be appointed by the Governor; and
 - (b) sections 52 to 57 have effect with respect to the tenure, salary and conditions of service of the CEO and the other matters provided for in those sections.

Subdivision 2 — Provisions applying to CEO under section 49(b) or 50

52. Term used: CEO

In this Subdivision —

CEO means a CEO to whom section 49(b) or 50 applies.

53. Term of office and resignation

- (1) Subject to this Act, the CEO holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for reappointment once or more than once.
- (2) The CEO may resign office by written notice delivered to the Governor.

54. Salary and entitlements

Subject to the *Salaries and Allowances Act 1975*, the CEO —

- (a) is to be paid salary and allowances at such rates per annum as the Minister determines on the recommendation of the Public Sector Commissioner; and
- (b) has the same annual leave, personal leave and long service leave entitlements as a permanent officer of the Public Service.

55. Entitlements of public service officer as CEO

- (1) If a person occupied an office in the Public Service immediately before being appointed to the office of CEO —
- (a) the person retains existing and accruing entitlements in respect of leave of absence as if service as CEO were a continuation of service in the office in the Public Service; and
 - (b) the person is entitled to be appointed to an office in the Public Service not lower in classification and salary than the office which the person occupied if —
 - (i) the person ceases to hold office as CEO on completion of a periodical appointment; and
 - (ii) at that time the person is eligible to occupy an office in the Public Service.
- (2) If a person is appointed to an office in the Public Service under subsection (1)(b) the person retains existing and accruing leave entitlements as if service in the Public Service were a continuation of service in the office of CEO.

56. Removal from office

- (1) In this section —
- misconduct*** includes conduct that renders the CEO unfit to hold office as CEO even though the conduct does not relate to a duty of the office.
- (2) The Governor may remove the CEO from office —
- (a) for —
 - (i) neglect of duty; or
 - (ii) misconduct or incompetence; or
 - (iii) mental or physical incapacity, other than temporary illness, impairing the performance of the CEO's duties;
- or

- (b) if the CEO is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.

57. Other conditions of service

Subject to this Subdivision, the Governor may, on the recommendation of the Public Sector Commissioner, determine other terms and conditions of service (if any) that apply to the CEO.

Subdivision 3 — Other staff

58. Other staff

- (1) Public service officers may be appointed under the *Public Sector Management Act 1994* Part 3 to enable the Institute to perform its functions.
- (2) The Institute may, subject to any relevant written law or any binding award, order or industrial agreement under the *Industrial Relations Act 1979*, employ or engage and manage staff otherwise than under the *Public Sector Management Act 1994* Part 3.
- (3) This section does not detract from the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Institute to engage a person under a contract for services or appoint a person on a casual employment basis.

59. Use of government staff and facilities

- (1) The Institute may by arrangement with the relevant employing authority make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency; or
 - (c) otherwise in the service of the State.

- (2) The Institute may by arrangement with —
- (a) a department of the Public Service; or
 - (b) a State agency,
- make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) is to be made on terms agreed to by the parties.

Division 3 — Advisory committees

60. Advisory committees

- (1) The Institute may —
- (a) appoint any advisory committee it considers necessary to provide advice to the Institute in relation to the Institute's functions; and
 - (b) appoint the members, and determine the functions, of each advisory committee; and
 - (c) discharge or alter an advisory committee.
- (2) An advisory committee must comply with all reasonable directions or requirements of the Institute, and otherwise may determine its own procedures.
- (3) An advisory committee must keep minutes of its meetings to a standard approved by the Institute and provide the Institute with a copy of the minutes of each meeting.

61. Advice of advisory committees

The Institute, in performing its functions, must have regard to the advice provided to it by an advisory committee but does not have to —

- (a) act on or give effect to the advice; or
- (b) wait for the advice before taking action.

62. Remuneration

- (1) Members of an advisory committee are entitled to be paid out of the funds of the Institute any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975*, if that Act applies to the member of an advisory committee.

Part 5 — Accountability and financial provisions

Division 1 — Accountability provisions

63. Minister may give directions

- (1) The Minister may give written directions to the Institute with respect to the performance of its functions, either generally or in relation to a particular matter, and the Institute is to give effect to any such direction.
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 73, within 14 days after the direction is given.
- (3) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Institute under the *Financial Management Act 2006* Part 5.

64. Minister to be kept informed

The Institute must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Institute; and
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters referred to in paragraph (a).

65. Minister to have access to information

- (1) In this section —
document includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
information means information specified, or of a description specified, by the Minister that relates to the Institute's functions.

- (2) The Minister is entitled —
 - (a) to have information in the possession of the Institute;
and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Institute to give information to the Minister;
and
 - (b) request the Institute to give the Minister access to information; and
 - (c) request the use of a staff member to obtain the information and give it to the Minister.
- (4) The Institute must comply with a request under subsection (3).

Division 2 — Financial provisions

66. 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 statutory authorities apply to and in relation to the Institute and its operations.

67. Institute's funds

- (1) An account called the Minerals Research Account is established for the Institute.
- (2) The Account is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (3) Money received by the Institute is to be credited to, and money paid by the Institute is to be debited to, the Account.

- (4) The funds available for the purpose of enabling the Institute to perform its functions consist of money that is lawfully received by, or made available to, the Institute.

68. Notice of financial difficulty

- (1) The Institute must notify the Minister if it forms the opinion that the Institute is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available to it or likely to be available to it at the time the financial obligation is due.
- (2) The notice must be in writing, giving reasons for the Institute's opinion.
- (3) Within 7 days after receipt of the notice, the Minister must —
- (a) confer with the Treasurer and the Institute for the purpose of determining what action is required to ensure that the Institute is able to satisfy the relevant financial obligation when it is due; and
 - (b) initiate such action as is required to ensure that the Institute is able to satisfy the relevant financial obligation when it is due.

Part 6 — Miscellaneous

69. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person other than the Institute for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Institute nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

70. Confidentiality of information under this Act

- (1) Subsection (2) applies to a person —
 - (a) who is or has been a member of the board; or
 - (b) who is or has been a staff member; or
 - (c) who is or has been a member of an advisory committee.
- (2) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
 - (a) for the purpose of performing functions under this Act; or
 - (b) as required or allowed by this Act or under another written law; or
 - (c) with the written consent of the person to whom the information relates; or
 - (d) for the purposes of proceedings in a court; or

- (e) in prescribed circumstances.

Penalty: a fine of \$100 000.

71. Confidentiality of information under repealed Acts

- (1) In this section —

repeal day means the day on which section 75 comes into operation;

repealed 1977 Act means the *Solar Energy Research Act 1977*;

repealed 1981 Act means the *Mining and Petroleum Research Act 1981*;

repealed 1987 Act means the Act repealed by section 75.

- (2) Subsection (3) applies to a person —

- (a) who has been a director of the Board of the Minerals and Energy Research Institute of Western Australia (the **1987 Institute**) established under the repealed 1987 Act; or
- (b) who has acted in the office of the Board Chairman or a director of the 1987 Institute; or
- (c) who has been a member, or a deputy of a member, of an advisory committee established under the repealed 1987 Act; or
- (d) who has been an officer or employee of the 1987 Institute; or
- (e) who has rendered services to the 1987 Institute under section 32 or 33 of the repealed 1987 Act; or
- (f) to whom the 1987 Institute allocated funds to enable that person to undertake or continue a particular research project (within the meaning of the repealed 1987 Act) or any person directing, working with or assisting that person on that research project; or
- (g) who has been a director of the Board of the Western Australian Mining and Petroleum Research Institute (the

- 1981 Institute*) established under the repealed 1981 Act;
or
- (h) who has acted in the office of the Board Chairman or a director of the 1981 Institute; or
 - (i) has been a member or a deputy of a member of the Mining and Petroleum Advisory Committee established under the repealed 1981 Act; or
 - (j) has been an officer or employee of the 1981 Institute; or
 - (k) has rendered services to the 1981 Institute under section 29 or 30 of the repealed 1981 Act; or
 - (l) who has been the Chairman or a Director of the Solar Energy Research Institute of Western Australia (the *1977 Institute*) established under the repealed 1977 Act; or
 - (m) who has acted in the office of the Chairman or a Director of the Board of the 1977 Institute; or
 - (n) has been a member or a deputy of a member of the Solar Energy Advisory Committee established under the repealed 1977 Act; or
 - (o) has rendered services to the 1977 Institute under section 29 or 30 of the repealed 1977 Act; or
 - (p) has been the liquidator holding office under section 38(1) of the repealed 1977 Act as the liquidator of the affairs of the 1977 Institute.
- (3) A person to whom this subsection applies must not, directly or indirectly, disclose or make use of any information obtained in the course of duty except —
- (a) as required or allowed by this Act or under another written law; or
 - (b) with the written consent of the person to whom the information relates; or
 - (c) for the purposes of proceedings in a court; or

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(d) in prescribed circumstances.

Penalty: a fine of \$100 000.

72. Regulations

- (1) The Governor may make regulations prescribing all matters that —
 - (a) are required or permitted by this Act to be prescribed; or
 - (b) are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may prescribe matters for or in respect of which fees may be charged under this Act and prescribe the amounts of such fees.

73. Laying documents before House of Parliament not sitting

- (1) If the Minister is required under section 63(2) or 74(3) to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
 - (a) when the Minister is ready to act, a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

74. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the fifth anniversary of the commencement of this section.
- (2) In the course of the review the Minister must consider and have regard to —
 - (a) the effectiveness of the operations of the Institute; and
 - (b) the need for the continuation of the Institute's functions; and
 - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister must prepare a report based on that review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament or dealt with under section 73.

Part 7 — Repeal and consequential amendments

Division 1 — *Minerals and Energy Research Act 1987* repealed

75. *Minerals and Energy Research Act 1987* repealed

The *Minerals and Energy Research Act 1987* is repealed.

Division 2 — Consequential amendments

76. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item for The Board of Directors of the Minerals and Energy Research Institute of Western Australia and insert:

The board of the Minerals Research Institute of Western Australia established under the *Minerals Research Institute of Western Australia Act 2013*.

77. *Financial Management Act 2006* amended

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete the item for Minerals and Energy Research Institute of Western Australia and insert:

Minerals Research Institute of Western Australia

78. *Public Sector Management Act 1994* amended

- (1) This section amends the *Public Sector Management Act 1994*.

(2) In Schedule 2 delete item 30 and insert:

30 Minerals Research Institute of Western Australia, established under the *Minerals Research Institute of Western Australia Act 2013*

Part 8 — Transitional and savings provisions for the *Minerals and Energy Research Act 1987*

Division 1 — Preliminary

79. Terms used

In this Part —

abolished Institute means the Minerals and Energy Research Institute of Western Australia established under the repealed Act;

asset means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description and includes any money, security, chose in action or document;

commencement day means the day on which section 75 comes into operation;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

repealed Act means the *Minerals and Energy Research Act 1987* as it was in force immediately before the commencement day;

right means any right, power, privilege or immunity whether actual, prospective or contingent.

80. *Interpretation Act 1984* not affected

This Part does not affect the operation of the *Interpretation Act 1984* Part V.

Division 2 — Transfer of abolished Institute's assets, rights and liabilities

81. Assets, rights and liabilities

- (1) On the commencement day —
 - (a) the assets and rights of the abolished Institute immediately before that day become, by force of this section, assets and rights of the Institute; and
 - (b) the liabilities of the abolished Institute immediately before that day become, by force of this section, liabilities of the Institute.
- (2) On the commencement day, any account operated and maintained under section 6(2)(c) of the repealed Act is to be closed by the CEO and any moneys standing to the credit of that account are to be credited to the Account.
- (3) On and after the commencement day, any proceedings that immediately before that day might have been brought or continued by the abolished Institute may be brought or continued by the Institute.
- (4) On and after the commencement day, any remedy that immediately before that day is available against or to the abolished Institute is available against or to the Institute.

82. Investments

- (1) The investment of any funds of the abolished Institute, that has an authority under section 27 of the repealed Act that is in effect immediately before the commencement day, continues to be authorised as if that Act had not been repealed.
- (2) Any funds referred to in subsection (1) that cease to be invested as described in that subsection are to be credited to the Account.

83. Registration of documents

(1) In this section —

relevant official means —

- (a) the Registrar of Titles under the *Transfer of Land Act 1893*; or
- (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents.

(2) The relevant officials are to take notice of this Part and are to record and register in the appropriate manner the documents necessary to give effect to this Part.

84. Exemption from State tax

(1) In this section —

state tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge, under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by operation of this Part; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

Division 3 — Transfer of CEO

85. Transfer of CEO

(1) The person who was chief executive officer of the abolished Institute immediately before the commencement day continues

in office, under and subject to this Act and the *Public Sector Management Act 1994*, as the CEO.

- (2) Subject to the *Public Sector Management Act 1994*, the employment of the CEO continues to be governed by the terms and conditions of employment that applied before the commencement day to that person as chief executive officer of the abolished Institute.
- (3) Except as otherwise agreed by the person referred to in subsection (1), the operation of subsection (1) does not —
 - (a) affect the person's remuneration; or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, personal leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the person's service.

Division 4 — Continuing effect of things done

86. Completion of things commenced

Anything commenced by the abolished Institute before the commencement day may be continued by the Institute so far as the doing of that thing is within the Institute's functions.

87. Continuing effect of things done

Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of the abolished Institute, to the extent that it —

- (a) has any force or significance; and
- (b) is not governed by another provision of this Part,

is to be taken to have been done or omitted by, to or in respect of the Institute so far as the act, matter or thing is within the Institute's functions.

88. Agreements and instruments generally

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the abolished Institute was a party; and
- (b) which contains a reference to the abolished Institute,

has effect on and after the commencement day, to the extent to which the agreement or instrument relates to the Institute's functions, as if —

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

89. Undetermined applications for financial assistance

- (1) In this section —

undetermined application for financial assistance means an application for financial assistance made to the abolished Institute —

- (a) that was made before the commencement day by a person undertaking or seeking to undertake a minerals research project (within the meaning of the repealed Act); and
- (b) that, on the commencement day, had not been determined by the abolished Institute.

- (2) On the commencement day an undetermined application for financial assistance —

- (a) is to be taken to have been made to the Institute under section 19(1) of this Act; and
- (b) is to be dealt with by the Institute in accordance with this Act.

90. Notices served under repealed Act

- (1) A notice served on a person under section 34(1) of the repealed Act but not complied with before the commencement day is to be taken to be a notice served under section 21(1) of this Act and section 21 of this Act applies to and in relation to that notice accordingly.
- (2) If a notice has been served on a person under section 34(3) of the repealed Act and, on the commencement day, any funds provided to the person and not expended by the person have not been recovered or received by the abolished Institute, section 23(6) of this Act applies to the funds as if financial assistance to the person had been terminated under section 23(2) or (3) of this Act.

Division 5 — Other transitional provisions

91. Transitional regulations

- (1) If this Part does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of—
 - (a) the repeal of the *Minerals and Energy Research Act 1987* under section 75; or
 - (b) an amendment made under Part 7; or
 - (c) the enactment of this Act,the Governor may make regulations (the ***transitional regulations***) prescribing all matters that are required, necessary or convenient to be prescribed for dealing with the matter or issue.
- (2) The transitional regulations may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.

- (3) If the transitional regulations provide that a state of affairs specified or described in the transitional regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the transitional regulations are published in the *Gazette* but not earlier than the commencement of this section, the transitional regulations have effect according to their terms.
- (4) If the transitional regulations contain a provision referred to in subsection (3), the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.

92. Savings

The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any right to damages or compensation; or
- (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

- (e) as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) as releasing or allowing the release of any surety.

Notes

¹ This is a compilation of the *Minerals Research Institute of Western Australia Act 2013*^{1a}. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Minerals Research Institute of Western Australia Act 2013</i>	23 of 2013	18 Dec 2013	s. 1 and 2: 18 Dec 2013 (see s. 2(a)); Act other than s. 1 and 2: 1 Feb 2014 (see s. 2(b) and <i>Gazette</i> 14 Jan 2014 p. 43)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 25 ²	26 of 2016	21 Sep 2016	To be proclaimed (see s. 2(b))

² On the date as at which this compilation was prepared, the *Local Government Legislation Amendment Act 2016* Pt. 3 Div. 25 had not come into operation. It reads as follows:

Part 3 — Amendments to other Acts in relation to regional subsidiaries

Division 25 — *Minerals Research Institute of Western Australia Act 2013* amended

75. Act amended

This Division amends the *Minerals Research Institute of Western Australia Act 2013*.

76. Section 11 amended

In section 11(1) in the definition of *public authority* delete paragraph (c) and insert:

- (c) a local government, regional local government or regional subsidiary;

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
1977 Institute	71(2)
1981 Institute	71(2)
1987 Institute	71(2)
abolished Institute	79
Account	3
advisory committee	3
asset	79
board	3
business arrangement	11(1)
CEO	3, 52
chairperson	3
commencement day	79
deputy chairperson	25
document	65(1)
information	65(1)
Institute	3
liability	79
member	3
mineral	3
minerals research	3
misconduct	30(1)
misconduct	56(1)
participate	11(1)
proposed revised plan	15
public authority	11(1)
relevant official	83(1)
repeal day	71(1)
repealed 1977 Act	71(1)
repealed 1981 Act	71(1)
repealed 1987 Act	71(1)
repealed Act	79
right	79
specified	23(1)
staff member	3
state tax	84(1)
transitional regulations	91(1)
unable to act	25
undetermined application for financial assistance	89(1)