

Western Australia

Zoological Parks Authority Act 2001

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No. 24 of 2001

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Zoological Parks Authority Act 2001

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
Part 2 — Zoological Parks Authority		
4.	Authority established	4
5.	Agent of the Crown	4
6.	Board of management	4
7.	Constitution and proceedings of the board	5
8.	Remuneration of members	5
Part 3 — Functions and powers		
9.	Functions	6
10.	Powers	7
11.	Requirements for Ministerial approval	9
12.	Authority to act in accordance with policy instruments	9
13.	Delegation	10
14.	Minister may give directions	10
15.	Minister to have access to information	11
Part 4 — Policy instruments		
Division 1 — Business plan		
16.	Draft business plan to be submitted to Minister	13
17.	Content of business plan	13

18.	Minister's powers in relation to draft business plan	14
19.	Modifications of business plan	14
	Division 2 — Annual operational plan	
20.	Draft annual operational plan to be submitted to Minister	15
21.	Content of annual operational plan	16
22.	Minister's powers in relation to draft annual operational plan	16
23.	Modifications of annual operational plan	17
	Part 5 — Staff	
24.	Chief Executive Officer	18
25.	Other staff	18
26.	Use of other government staff etc.	19
	Part 6 — Park management officers	
27.	Park management officers	20
28.	Identity cards	20
29.	Enforcement powers of park management officers	21
30.	Requirement to leave zoological park	22
31.	Obstruction of park management officer	22
	Part 7 — Financial provisions	
32.	Funds of the Authority	23
33.	Zoological Parks Authority Account	23
34.	Borrowing from Treasurer	24
35.	Other borrowing	24
36.	Guarantee by Treasurer	24
37.	Effect of guarantee	25
38.	Application of <i>Financial Administration and Audit Act 1985</i>	25
	Part 8 — General	
39.	Protection from liability	26
40.	Execution of documents by the Authority	26
41.	Confidentiality	27
42.	Onus of proof in vehicle offences may be shifted	27
43.	Infringement notices	29
44.	Notice placing onus on vehicle owner	30
45.	Regulations	31

46.	Repeal	32
47.	Consequential amendments	32
48.	Review of Act	32

Schedule 1 — Perth Zoological Park

Schedule 2 — Constitution and proceedings of board

Division 1 — General provisions

1.	Term of office	35
2.	Resignation, removal etc.	35
3.	Chairperson and deputy chairperson	36
4.	Leave of absence	36
5.	Member unable to act	36
6.	Saving	36
7.	Calling of meetings	36
8.	Presiding officer	37
9.	Quorum	37
10.	Voting	37
11.	Minutes	37
12.	Resolution without meeting	37
13.	Telephone or video meetings	37
14.	Committees	38
15.	Board to determine its own procedures	38

Division 2 — Disclosure of interests etc.

16.	Disclosure of interests	38
17.	Voting by interested members	38
18.	Clause 17 may be declared inapplicable	39
19.	Quorum where clause 17 applies	39
20.	Minister may declare clauses 17 and 19 inapplicable	39

Schedule 3 — Tenure, salary, conditions of service etc. of Chief Executive Officer

Division 1 — General

1.	Effect of Authority being SES organisation	40
2.	Effect of Authority becoming non-SES organisation	40

3.	Appointment of Chief Executive Officer	40
	Division 2 — Provisions applying to Chief Executive Officer under clause 1(b) or 2	
4.	Meaning of “Chief Executive Officer”	40
5.	Tenure of office	41
6.	Salary and entitlements	41
7.	Appointment of public service officer	41
8.	Removal from office	42
9.	Other conditions of service	42
	Schedule 4 — Transitional and saving provisions	
1.	Definitions	43
2.	Interpretation Act to apply	43
3.	Board dissolved	43
4.	Membership	44
5.	Devolution of assets, liabilities etc.	44
6.	Agreements and instruments	45
7.	References to Board in written law	45
8.	Chief executive officer	45
9.	Staff	46
10.	Annual report for part of a year	46
11.	Immunity to continue	46
12.	Exemption from State tax	47
13.	Registration of documents	47
14.	Saving	47
	Schedule 5 — Consequential amendments to various Acts	
1.	<i>Constitution Acts Amendment Act 1899</i> amended	48
2.	<i>Financial Administration and Audit Act 1985</i> amended	48
3.	<i>Prevention of Cruelty to Animals Act 1920</i> amended	48
4.	<i>Public Sector Management Act 1994</i> amended	49
5.	<i>Sentencing Act 1995</i> amended	49

Defined Terms

Western Australia

Zoological Parks Authority Act 2001

No. 24 of 2001

An Act to —

- **establish an Authority to control and manage zoological parks;**
 - **repeal the *Zoological Gardens Act 1972*;**
 - **consequentially amend certain other Acts,**
- and for related purposes.**

[Assented to 26 November 2001]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Zoological Parks Authority Act 2001*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears —

“**Account**” means the account referred to in section 33(1);

“**Authority**” means the Zoological Parks Authority established by section 4(1);

“**board**” means the board of management provided for by section 6;

“**Chief Executive Officer**” means the person appointed as such for the purposes of section 24;

“**committee**” means a committee appointed under clause 14 of Schedule 2;

“**function**”, except in sections 9 and 10, includes power, duty and authority;

“**member**” means member of the board and includes a person appointed under clause 5 of Schedule 2 and a member of a committee;

“**member of staff**” means the Chief Executive Officer or a person referred to in section 25 or 26;

“**owner**”, in relation to a vehicle, means —

- (a) the person who holds the licence for the vehicle that is required under the *Road Traffic Act 1974*; or

- (b) if the vehicle is not licensed under the *Road Traffic Act 1974*, the person who owns the vehicle or is entitled to its possession;

“park management officer” means —

- (a) a person designated as such under section 27; or
- (b) a police officer;

“Treasurer” means Treasurer of the State;

“vehicle” has the same meaning as in the *Road Traffic Act 1974*;

“zoological park” means —

- (a) the land described in Schedule 1 (known as “Perth Zoological Park”);
- (b) land reserved under the *Land Administration Act 1997* the care, control and management of which is placed with the Authority under that Act; and
- (c) land prescribed by regulation for the purposes of this definition;

“zoological specimen” means —

- (a) any living animal;
- (b) any living or dead larvae, embryo, egg or sperm of any animal or other part or product of an animal from which another animal could be produced;
- (c) the carcass of an animal;
- (d) any recognised zoological taxon; and
- (e) any plant or part of a plant required for the care, breeding or management of a zoological specimen.

Part 2 — Zoological Parks Authority

4. Authority established

- (1) A body called the Zoological Parks Authority is established.
- (2) The Authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Authority in its corporate name.
- (4) The Authority may use, and operate under, one or more trading names approved by the Minister.
- (5) A trading name can be —
 - (a) an abbreviation or adaptation of the Authority's corporate name; or
 - (b) a name other than the Authority's corporate name.

5. Agent of the Crown

The Authority is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

6. Board of management

- (1) The Authority is to have a board of management comprising 8 persons appointed in writing by the Minister.
- (2) The board is the governing body of the Authority and, in the name of the Authority, is to perform the functions of the Authority under this Act.
- (3) The Minister is to ensure that each person appointed to the board has expertise that, in the Minister's opinion, is relevant to the functions of the Authority.

7. Constitution and proceedings of the board

Schedule 2 has effect with respect to the board and its members.

8. Remuneration of members

A member is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

Part 3 — Functions and powers

9. Functions

- (1) The functions of the Authority are —
 - (a) to establish, care for, control and manage zoological parks in which zoological specimens are kept and displayed, and plants cultivated, for conservation, research, scientific, educational, cultural or recreational purposes;
 - (b) to collaborate in, carry out or procure the carrying out of, breeding programmes for the preservation of threatened animal species;
 - (c) to collaborate in, carry out or procure the carrying out of, research programmes for the preservation of threatened animal species and the conservation and management of other species;
 - (d) to carry out public education and awareness programmes;
 - (e) to use the knowledge, expertise and resources of the Authority to provide scientific, technical, educational, training, management and advisory services;
 - (f) to provide, improve and promote recreational services and facilities in zoological parks; and
 - (g) to conserve and enhance the gardens, amenities and natural environment of zoological parks.
- (2) It is also a function of the Authority to do things that its board determines are conducive or incidental to the performance of a function referred to in subsection (1).

10. Powers

- (1) The Authority has all the powers it needs to perform its functions.
- (2) Without limiting subsection (1), the Authority may for the purpose of performing a function —
 - (a) acquire, keep, display, sell or dispose of zoological specimens, plants and other things for zoological parks;
 - (b) provide and maintain facilities for the instruction, entertainment and convenience of the public;
 - (c) subject to section 11, acquire, hold and dispose of real and personal property;
 - (d) manage, improve and develop real or personal property vested in it or acquired by it or arrange for property to be managed, improved or developed;
 - (e) subject to section 11, grant a lease or licence on such terms and conditions as the board thinks fit;
 - (f) cooperate with, and provide funds and other assistance to other bodies and to individuals in relation to the function;
 - (g) give or take zoological specimens and plants by way of loan or exchange with other bodies or individuals;
 - (h) produce and publish information on matters related to the function;
 - (i) develop and turn to account any technology, software or other intellectual property that relates to the function, and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;
 - (j) require payment of rent, fees or other charges for the use of any of its facilities (whether permanent or temporary) or for the use of any part of a zoological park;

- (k) require payment of fees —
 - (i) for entry to a zoological park; and
 - (ii) for admission to a particular display or event being conducted on any part of a zoological park for purposes consistent with the function, or to any land or facility being used in connection with such a display or event;
- (l) fix the amount of rent, fees or charges referred to in paragraphs (j) and (k) with power to waive, reduce or refund the amount payable in particular cases;
- (m) enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, in the State or elsewhere) —
 - (i) for the performance by that person or body of any work or the supply of equipment or services;
 - (ii) to provide consultancy or advisory services to that person or body; or
 - (iii) for the commercial exploitation of the knowledge expertise and resources of the Authority and the rights referred to in paragraph (i);
- (n) on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to a business arrangement;
- (o) act in conjunction with a person, a firm, a local government or a department of the Public Service, or other agency or instrumentality, of the State or the Commonwealth; and
- (p) promote and market zoological parks and the Authority's activities.

- (3) For the purposes of subsection (2)(n) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.
- (4) In this section —
 - “**business arrangement**” means a company, a partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship;
 - “**participate**” includes form, promote, establish, enter into, manage, dissolve, wind-up, and do anything incidental to the participating in a business arrangement.

11. Requirements for Ministerial approval

- (1) The Authority must obtain the approval of the Minister before exercising —
 - (a) the power conferred by section 10(2)(c) to acquire or dispose of real property; or
 - (b) the power conferred by section 10(2)(e), if the proposed lease or licence is to be granted for a term exceeding a period of 5 years.
- (2) For the purposes of subsection (1)(b), any additional term obtainable at the option of the lessee or licensee is to be included when calculating the length of the term of a proposed lease or licence.

12. Authority to act in accordance with policy instruments

The Authority is to perform its functions in accordance with its business plan and its annual operational plan as existing from time to time.

13. Delegation

- (1) The Authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made —
 - (a) to a member or members of the board;
 - (b) to a member or members of staff; or
 - (c) with the approval of the Minister, to a committee or any other person.
- (3) A function performed by a delegate is taken to be performed by the Authority.
- (4) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section is to be read as limiting the ability of the Authority to act through its staff and agents in the normal course of business.

14. Minister may give directions

- (1) The Minister may give written directions to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board 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 subsection (3), within 14 days after the direction is given.
- (3) If —
 - (a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and

- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the direction to the Clerk of that House.

- (4) A copy of a direction transmitted to the Clerk of a House is to be regarded —
 - (a) as having been laid before that House; and
 - (b) as being a document published by order or under the authority of that House.
- (5) The laying of a copy of a direction that is regarded as having occurred under subsection (4)(a) 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.
- (6) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.

15. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Authority; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Authority to furnish information to the Minister;
 - (b) request the Authority to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the Authority to obtain the information and furnish it to the Authority.
- (3) The Authority is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “document”** includes any tape, disc 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 functions of the Authority.

Part 4 — Policy instruments

Division 1 — Business plan

16. Draft business plan to be submitted to Minister

- (1) The board is to in each year prepare, and submit to the Minister for approval, a draft business plan for the Authority.
- (2) Each business plan is to be submitted not later than 2 months before the start of the next financial year.
- (3) The first business plan for the Authority is to be in respect of the next full financial year after the commencement of this Act.
- (4) If a draft business plan has not been approved by the Minister before the start of the financial year, the latest draft plan is to be the business plan for the Authority until a draft business plan is approved by the Minister.
- (5) In subsection (4) —
“latest draft plan” means the draft business plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.
- (6) When the board and the Minister reach agreement on a draft business plan, it becomes the business plan for the relevant financial year or the remainder of the year, as the case may be.
- (7) The Minister is not to approve a draft business plan except with the Treasurer’s concurrence.

17. Content of business plan

- (1) A business plan must set out at a strategic level the Authority’s —
 - (a) medium to long term economic and financial objectives;

- (b) medium to long term community based and research objectives; and
 - (c) operational targets,
- and how those objectives and targets will be achieved.
- (2) The matters that are to be considered by the board in the preparation of a business plan include —
 - (a) commercial strategies, pricing of products, admissions and services, financial requirements, capital expenditure and personnel requirements; and
 - (b) initiatives to improve consumer outcomes.
 - (3) A business plan is to cover a forecast period of 5 years.

18. Minister's powers in relation to draft business plan

- (1) The Minister may return a draft business plan to the board and request it to consider or further consider any matter and deal with it in the draft plan.
- (2) The board is to comply with a request under subsection (1) as soon as is practicable.
- (3) If a draft business plan has not been approved by the Minister by one month before the start of the next financial year, the Minister may, by written notice, direct the board to make specified modifications to the draft plan.
- (4) The board is to comply with a direction under subsection (3) as soon as is practicable.

19. Modifications of business plan

- (1) A business plan may be modified by the board with the approval of the Minister.

- (2) The Minister is not to approve any modification of a business plan except with the Treasurer's concurrence.

Division 2 — Annual operational plan

20. Draft annual operational plan to be submitted to Minister

- (1) The board is to in each year prepare, and submit to the Minister for approval, a draft annual operational plan for the Authority.
- (2) Each annual operational plan is to be submitted not later than 2 months before the start of the next financial year.
- (3) The first annual operational plan for the Authority is to be in respect of the next full financial year after the commencement of this Act.
- (4) If a draft annual operational plan has not been approved by the Minister before the start of the financial year, the latest draft plan is to be the annual operational plan for the Authority until a draft annual operational plan is approved by the Minister.
- (5) In subsection (4) —
“latest draft plan” means the draft annual operational plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.
- (6) When the Minister approves a draft annual operational plan, it becomes the annual operational plan for the relevant financial year or the remainder of the year, as the case may be.
- (7) The Minister is not to approve a draft annual operational plan except with the Treasurer's concurrence.

- (8) The Minister is to cause a copy of the annual operational plan to be laid before each House of Parliament within 14 days after the plan is approved by the Minister.

21. Content of annual operational plan

- (1) An annual operational plan must be consistent with the business plan.
- (2) An annual operational plan is to specify —
- (a) an outline of the Authority's objectives;
 - (b) business and service performance targets and other measures by which to judge performance in relation to objectives for the relevant financial year;
 - (c) allocation of resources;
 - (d) an outline of the nature and scope of the functions to be performed during the relevant financial year; and
 - (e) an estimate of income and expenditure and source of funding during the relevant financial year.
- (3) An annual operational plan is to cover a financial year.

22. Minister's powers in relation to draft annual operational plan

- (1) The Minister may return a draft annual operational plan to the board and request it to consider or further consider any matter and deal with it in the draft plan.
- (2) The board is to comply with a request under subsection (1) as soon as is practicable.
- (3) If a draft annual operational plan has not been approved by the Minister by one month before the start of the next financial year, the Minister may, by written notice, direct the board to make specified modifications to the draft plan.

- (4) The board is to comply with a direction under subsection (3) as soon as is practicable.

23. Modifications of annual operational plan

- (1) An annual operational plan may be modified by the board with the approval of the Minister.
- (2) The Minister is not to approve any modification of an annual operational plan except with the Treasurer's concurrence.

Part 5 — Staff

24. Chief Executive Officer

- (1) There is to be a Chief Executive Officer of the Authority.
- (2) Schedule 3 has effect with respect to the Chief Executive Officer.
- (3) Subject to the control of the board, the Chief Executive Officer is responsible for, and has the powers needed to administer, the day to day operations of the Authority.

25. Other staff

- (1) The power to engage and manage the staff of the Authority is vested in the board.
- (2) The power conferred by subsection (1) —
 - (a) includes power to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
 - (b) does not preclude the delegation of any matter under section 13.
- (3) The remuneration of and other terms and conditions of employment of staff are —
 - (a) not to be less favourable than is provided for in —
 - (i) an applicable industrial award, order or agreement; or
 - (ii) the *Minimum Conditions of Employment Act 1993*;and
 - (b) to be determined after consultation with the Minister for Public Sector Management.

- (4) Nothing in this section affects the operation of the *Workplace Agreements Act 1993* or section 100 of the *Public Sector Management Act 1994*.

26. Use of other government staff etc.

- (1) The Authority may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service;
 - (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the Crown in right of the State.
- (2) The Authority may by arrangement with —
- (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

Part 6 — Park management officers

27. Park management officers

- (1) The Authority may, by instrument in writing, designate a member of staff or other person to be a park management officer.
- (2) The Authority may revoke a designation under subsection (1) at any time.
- (3) A police officer is ex officio a park management officer.

28. Identity cards

- (1) The Authority is to issue to a park management officer an identity card stating that he or she has been designated as a park management officer.
- (2) An identity card is to be in a form approved by the Authority.
- (3) A park management officer must produce the identity card whenever requested to do so by any person in respect of whom the officer has exercised, or is about to exercise, a power under section 29 or 43.
- (4) Production of an identity card is evidence in any court of the designation of the park management officer to whom the identity card relates.
- (5) A person who ceases to be a park management officer must, as soon as practicable, return his or her identity card to the Chief Executive Officer or other person authorised to receive it.
Penalty: \$1 000.
- (6) This section does not apply to a park management officer who is a police officer.

29. Enforcement powers of park management officers

- (1) This section applies to an offence against section 31 or the regulations.
- (2) A park management officer who finds a person committing an offence to which this section applies or who on reasonable grounds suspects that such an offence has been committed or is about to be committed by a person may —
 - (a) require the person to give to the officer the person's name and address;
 - (b) stop, detain and search any vehicle if a person in or on the vehicle is, or is suspected by the officer on reasonable grounds of being, the offender; and
 - (c) remove any vehicle, animal or other thing from a zoological park.
- (3) A person must, when required to do so under subsection (2)(a), give the person's full and correct name and address.
- (4) If a person does not under subsection (3) give the person's full and correct name and address to a park management officer —
 - (a) the person obstructs the park management officer in the performance of the officer's functions and section 31 applies accordingly; and
 - (b) the park management officer may detain the person until the person can be delivered to a police officer to be dealt with according to law.
- (5) Before exercising a power conferred by subsection (2)(b) or (c) a park management officer must take all reasonable steps to inform the person, or the owner or person in charge of the vehicle or animal, as the case requires, of —
 - (a) his or her intention to exercise the power; and

s. 30

- (b) his or her reasons for believing that the proposed exercise of the power is justified.
- (6) Nothing in this section derogates from the powers of a park management officer who is a police officer.

30. Requirement to leave zoological park

- (1) A park management officer may require a person to leave a zoological park if the park management officer —
 - (a) finds the person committing an offence or believes on reasonable grounds that the person has committed, or is about to commit, an offence; or
 - (b) believes on reasonable grounds that an emergency situation exists in the zoological park.
- (2) A person must not remain in a zoological park after being required to leave the zoological park under subsection (1).
Penalty: \$2 000.
- (3) If a person contravenes subsection (2), a police officer may remove, or make arrangements for the removal of, the person from the zoological park and if necessary detain the person for the purpose of effecting his or her removal.
- (4) A park management officer who is not a police officer may detain a person who has contravened subsection (2) until the person can be delivered to a police officer for removal under subsection (3).
- (5) In this section —
“**emergency situation**” means a fire or other occurrence that endangers, or is likely to endanger, public or animal safety.

31. Obstruction of park management officer

A person must not resist, delay or in any way obstruct a park management officer in the performance of his or her functions.
Penalty: \$5 000, or imprisonment for 6 months, or both.

Part 7 — Financial provisions

32. Funds of the Authority

- (1) The funds available for the purpose of enabling the Authority to perform its functions consist of —
 - (a) moneys from time to time appropriated by Parliament;
 - (b) moneys received by the Authority in the performance of its functions;
 - (c) moneys received by the Authority by way of gift, including a gift by will;
 - (d) moneys borrowed by the Authority under section 34 or 35; and
 - (e) other moneys lawfully received by, made available to or payable to the Authority.
- (2) Where any gift, including a gift by will, has been made to the Authority upon lawful conditions that are accepted by the Authority, it is to apply the gift in accordance with those conditions.

33. Zoological Parks Authority Account

- (1) The funds referred to in section 32 are to be credited to an account called the “Zoological Parks Authority Account” —
 - (a) at the Treasury; or
 - (b) with the approval of the Treasurer, at a bank or other financial institution,

and if paragraph (a) applies the Account is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

- (2) The Account is to be charged with —
- (a) the remuneration and allowances payable under section 8;
 - (b) interest on and repayment of moneys borrowed by the Authority under section 34 or 35; and
 - (c) all other expenditure lawfully incurred by the Authority in the performance of its functions.

34. Borrowing from Treasurer

- (1) The Authority may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.
- (2) By virtue of this subsection the Account and the assets of the Authority are charged with the due performance by the Authority of its obligations in respect of a loan under subsection (1).

35. Other borrowing

- (1) In addition to its powers under section 34, the Authority may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.
- (2) Any moneys borrowed by the Authority under subsection (1) may be raised —
- (a) as one loan or as several loans; and
 - (b) in such manner as the Treasurer approves.

36. Guarantee by Treasurer

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable

by the Authority in respect of moneys borrowed by it under section 35.

- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given, the Authority is to —
 - (a) give to the Treasurer such security as the Treasurer requires; and
 - (b) execute all instruments that are necessary for the purpose.
- (4) The Treasurer may fix charges to be paid by the Authority to the credit of the Consolidated Fund in respect of a guarantee given under this section.

37. Effect of guarantee

- (1) The due payment of moneys under a guarantee given under section 36 is to be —
 - (a) made by the Treasurer; and
 - (b) charged to, and paid out of, the Consolidated Fund,and this subsection appropriates that Fund accordingly.
- (2) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 36.

38. 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 Authority and its operations.

Part 8 — General

39. Protection from liability

- (1) An action in tort does not lie against a person other than the Authority 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 Authority nor the Crown 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.

40. Execution of documents by the Authority

- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority if —
 - (a) the common seal of the Authority is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Authority by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Authority is not to be affixed to any document except as authorised by the board.
- (4) The common seal of the Authority is to be affixed to the document in the presence of the chairperson, or deputy chairperson, of the board and the Chief Executive Officer, and each of them is to sign the document to attest that the common seal was so affixed.

- (5) The Authority may, by writing under its seal, authorise a member or members of the board or a member or members of staff to sign documents on behalf of the Authority, either generally or subject to such conditions and restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Authority, it is to be presumed that the seal is the common seal of the Authority until the contrary is shown.

41. Confidentiality

A person who is or has been a member of the board or of a committee or a member of staff 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;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

42. Onus of proof in vehicle offences may be shifted

- (1) In this section —
“**vehicle offence**” means an offence against the regulations of which the use, driving, parking, standing or leaving of a vehicle is an element.

- (2) Where a vehicle offence is alleged to have been committed and the identity of the person committing the alleged offence is not known and cannot immediately be ascertained a park management officer may give the owner of the vehicle a notice under this section.
- (3) The notice is to be in the prescribed form and is to contain particulars of the alleged offence and require the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.
- (4) The notice may be addressed to the owner of the vehicle without naming, or stating the address of, the owner and may be given by —
 - (a) attaching it to the vehicle or leaving it in or on the vehicle at or about the time that the alleged offence is believed to have been committed; or
 - (b) giving it to the owner within 21 days after the alleged offence is believed to have been committed.
- (5) The notice is to include a short statement of the effect of subsection (6).
- (6) Unless, within 28 days after being served with the notice, the owner of the vehicle —
 - (a) informs the Authority or a member of staff authorised for the purposes of this paragraph as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or
 - (b) satisfies the Authority that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

43. Infringement notices

- (1) In this section —
“authorised person” means a person appointed under subsection (10) to be an authorised person for the purposes of the subsection in which the term is used.
- (2) A park management officer who has reason to believe that a person has committed a prescribed offence against this Act or the regulations may give an infringement notice to the alleged offender within 21 days after the alleged offence is believed to have been committed.
- (3) An infringement notice is to be in the prescribed form and is to —
- (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the modified penalty prescribed by regulation at the time the alleged offence is believed to have been committed.
- (5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be

paid and the extension may be allowed whether or not the period of 28 days has elapsed.

- (6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount of the modified penalty is to be refunded.
- (9) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (10) The Authority may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsections (3), (5) or (7), but a park management officer who gives an infringement notice is not eligible to be an authorised person for the purposes of any of those subsections in relation to that notice.

44. Notice placing onus on vehicle owner

- (1) If an alleged offence is one for which a notice under section 42 can be given to the owner of a vehicle involved in the commission of the offence, that notice can be included in the same document as an infringement notice given to the owner for the alleged offence.

- (2) For the purpose of giving the vehicle owner an infringement notice that is with a notice under section 42 —
 - (a) it is a sufficient ground for believing the owner to have committed the alleged offence that the person is the owner; and
 - (b) the infringement notice may be addressed and given as specified in section 42(4).
- (3) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, section 42(6) does not have effect to deem the owner to have committed the offence.
- (4) The statement required by section 42(5) is to include a description of the effect of subsection (3) if an infringement notice is given with a notice under section 42.

45. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made —
 - (a) prescribing land vested in or held by the Authority for the purposes of the definition of “zoological park” in section 3;
 - (b) providing for the care, control and management of zoological parks;
 - (c) providing for the times at which a zoological park or any part of a zoological park is to be open, or closed, to the public;
 - (d) controlling or prohibiting the doing or omitting to do a thing or class of things in a zoological park;

- (e) regulating the duties and conduct of persons in a zoological park;
- (f) prohibiting, restricting or regulating the use, driving, parking, standing or leaving of vehicles in any part of a zoological park;
- (g) without limiting section 10(2)(j), (k) and (l), providing for the imposition and payment of fees and charges; and
- (h) providing that contravention of a regulation constitutes an offence and providing for a penalty not exceeding \$2 000 in respect of any such offence.

46. Repeal

- (1) The *Zoological Gardens Act 1972* is repealed.
- (2) The *Zoological Gardens By-laws 1975* are repealed.
- (3) Schedule 4 has effect with respect to transitional and saving provisions.

47. Consequential amendments

The Acts referred to in Schedule 5 are amended in the manner specified in that Schedule.

48. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Authority;
 - (b) the need for the continuation of the functions of the Authority; and

- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

Schedule 1 — Perth Zoological Park

[s. 3]

Class “A” Reserve No. 22503 comprising Perth Suburban Lots 108, 121, 122, 326-330 (inclusive). Area 17.3256 hectares.

Class “A” Reserve No. 8581 comprising Perth Suburban Lot 438.
Area 5 476 square metres.

Perth Suburban Lot 427 containing 1 012 square metres or thereabout being the land comprised and described in Certificate of Title Volume 249 Folium 165.

Schedule 2 — Constitution and proceedings of board

[s. 7]

Division 1 — General provisions

1. Term of office

- (1) Subject to clause 2 a member holds office for such term, not exceeding 4 years, as is specified in the instrument of his or her appointment, and is eligible for reappointment.
- (2) Despite subclause (1), if the period of office of a member expires by effluxion of time without a person having been appointed to fill the vacancy, the member continues in office until —
 - (a) a person is appointed to fill the vacancy; or
 - (b) a period of 3 months elapses after the expiry of the period of office,whichever occurs first.

2. Resignation, removal etc.

- (1) The office of a member becomes vacant if he or she —
 - (a) resigns the office by written notice addressed to the Minister;
 - (b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (c) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member from office for —
 - (a) misbehaviour or incompetence;
 - (b) mental or physical incapacity, other than temporary illness, impairing the performance of his or her functions; or
 - (c) absence without leave, from 3 consecutive meetings of the board of which the member has had notice.

Schedule 2 Constitution and proceedings of board

- (3) In subclause (1)(a) —
“**misbehaviour**” includes conduct that renders the member unfit to hold office notwithstanding that the conduct does not relate to any function of the office.

3. Chairperson and deputy chairperson

- (1) The Minister is to appoint a member to be chairperson of the board and another to be deputy chairperson.
- (2) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson’s place.
- (3) Where the deputy chairperson is acting in place of the chairperson, clause 5 applies as if the deputy chairperson were absent from the meeting.

4. Leave of absence

The board may grant leave of absence to a member on such terms and conditions as it thinks fit.

5. Member unable to act

If a member, other than the chairperson, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the board.

6. Saving

No act or omission of a person acting in place of another under clause 3 or 5 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

7. Calling of meetings

- (1) Subject to subclause (2), meetings are to be held at the times and places that the board determines.

- (2) A special meeting of the board may at any time be convened by the chairperson.
- (3) The first meeting of the board is to be convened by the chairperson.

8. Presiding officer

- (1) The chairperson is to preside at all meetings of the board at which he or she is present.
- (2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

9. Quorum

A quorum for a meeting of the board is at least 5 members.

10. Voting

Each question before the board is to be decided by a majority of its members but, if there is an equality of votes, the chairperson has a second or casting vote.

11. Minutes

The board is to cause accurate minutes to be kept of the proceedings at its meetings.

12. Resolution without meeting

A resolution in writing signed by each member or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the board.

13. Telephone or video meetings

A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the board if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

14. Committees

- (1) The board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the board but must include at least one person who is a member of the board or a member of staff.
- (3) Subject to the directions of the board and to the terms of any delegation under section 13, a committee may determine its own procedures.

15. Board to determine its own procedures

Subject to this Act, the board is to determine its own procedures.

Division 2 — Disclosure of interests etc.

16. Disclosure of interests

- (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: \$10 000.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

17. Voting by interested members

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 —
 - (i) on the matter; or

- (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

18. Clause 17 may be declared inapplicable

Clause 17 does not apply if the board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

19. Quorum where clause 17 applies

- (1) Despite clause 9, if a member of the board is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 4 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 insofar as the board cannot deal with it because of subclause (1).

20. Minister may declare clauses 17 and 19 inapplicable

- (1) The Minister may by writing declare that clause 17 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.

Schedule 3 — Tenure, salary, conditions of service etc. of Chief Executive Officer

[s.24(2)]

Division 1 — General

1. Effect of Authority being SES organisation

While the Authority is an SES organisation under the *Public Sector Management Act 1994*, the Chief Executive Officer 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.

2. Effect of Authority becoming non-SES organisation

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

3. Appointment of Chief Executive Officer

- (1) If clause 1(a) applies, the Chief Executive Officer is to be appointed and hold office under Part 3 of the *Public Sector Management Act 1994*.
- (2) If clause 1(b) or 2 applies, the Chief Executive Officer is to be appointed by the Governor and clauses 4 to 9 have effect with respect to the tenure, salary and conditions of service of the Chief Executive Officer and the other matters provided for in those clauses.

Division 2 — Provisions applying to Chief Executive Officer under clause 1(b) or 2

4. Meaning of “Chief Executive Officer”

In this Division —

“**Chief Executive Officer**” means a Chief Executive Officer to whom clause 1(b) or 2 applies.

5. Tenure of office

- (1) Subject to this Act, the Chief Executive Officer 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 Chief Executive Officer may resign office by written notice delivered to the Governor.

6. Salary and entitlements

Subject to the *Salaries and Allowances Act 1975*, the Chief Executive Officer —

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

7. Appointment of public service officer

- (1) If a person occupied an office in the Public Service immediately before being appointed to the office of Chief Executive Officer —
 - (a) the person retains existing and accruing entitlements in respect of leave of absence as if service as Chief Executive Officer 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 Chief Executive Officer on the completion of a periodical appointment; and
 - (ii) at that time the person is eligible to occupy an office in the Public Service.
- (2) Where a person is appointed to an office in the Public Service under subclause (1)(b) the person retains existing and accruing leave

Schedule 3 Tenure, salary, conditions of service etc. of Chief Executive

entitlements as if service in the Public Service were a continuation of service in the office of Chief Executive Officer.

8. Removal from office

- (1) The Governor may remove the Chief Executive Officer from office —
- (a) for —
 - (i) misbehaviour or incompetence; or
 - (ii) mental or physical incapacity, other than temporary illness, impairing the performance of the Chief Executive Officer's functions;
 - (b) if the Chief Executive Officer becomes a bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of salary for their benefit.
- (2) In subclause (1)(a)(i) —
- “misbehaviour”** includes conduct that renders the Chief Executive Officer unfit to hold office as Chief Executive Officer notwithstanding that the conduct does not relate to any function of the office.

9. Other conditions of service

Subject to this Schedule, the Governor may, on the recommendation of the Minister for Public Sector Management, determine other terms and conditions of service (if any) that apply to the Chief Executive Officer.

Schedule 4 — Transitional and saving provisions

[s. 46(3)]

1. Definitions

In this Schedule, unless the contrary intention appears —

“**assets**” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“**Board**” means the Zoological Gardens Board established under the repealed Act as in force before commencement day;

“**commencement day**” means the day on which this Act comes into operation;

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

“**repealed Act**” means the *Zoological Gardens Act 1972*;

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

2. Interpretation Act to apply

This Schedule does not limit the operation of the *Interpretation Act 1984*.

3. Board dissolved

The Board is dissolved.

4. Membership

- (1) The person who was President of the Board immediately before commencement day continues in office, under and subject to this Act, as chairperson of the board for the term of his or her appointment.
- (2) The person who was Vice President of the Board immediately before commencement day continues in office, under and subject to this Act, as deputy chairperson of the board for the term of his or her appointment.
- (3) The persons who were members of the Board immediately before commencement day continue in office, under and subject to this Act, as members of the board for the term of their appointments.
- (4) A person to whom subclause (1), (2) or (3) applies is to be regarded as having been appointed under section 6.

5. Devolution of assets, liabilities etc.

On commencement day —

- (a) the assets and rights of the Board that were immediately before commencement day vested in the Board vest in the Authority by force of this clause;
- (b) the liabilities of the Board immediately before commencement day become, by force of this clause, the liabilities of the Authority;
- (c) any proceedings or remedy that immediately before commencement day might have been brought or continued by or available against or to the Board, may be brought or continued and are available, by or against or to the Authority;
- (d) any act, matter or thing done or omitted to be done before the commencement by, to or in respect of the Board (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Authority;
- (e) anything lawfully commenced by the Board may, so far as it is not contrary to this Act, be carried on and completed by the Authority; and

- (f) the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the Board.

6. Agreements and instruments

Any agreement or instrument subsisting immediately before commencement day —

- (a) to which the Board is a party; or
- (b) which contains a reference to the Board,

has effect after commencement day as if —

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

7. References to Board in written law

A reference to the Board in an enactment in force immediately before commencement day may, where the context so requires, be read as if it had been amended to be a reference to the Authority.

8. Chief executive officer

- (1) The person who was chief executive officer of the Board immediately before commencement day continues in office, under and subject to this Act and the *Public Sector Management Act 1994*, as the Chief Executive Officer of the Authority.
- (2) Subject to the *Public Sector Management Act 1994*, the employment of the Chief Executive Officer continues to be governed by the terms and conditions of employment that applied before commencement day to that person as chief executive officer of the Board.

9. Staff

- (1) A person in the employment of the Board immediately before commencement day is to be taken after commencement day to be engaged by the Authority under section 25.
- (2) A person engaged under a contract for services by the Board immediately before commencement day is to be taken to be engaged under a contract for services by the Authority under section 100 of the *Public Sector Management Act 1994*.
- (3) Nothing in this clause prevents the exercise by the Authority after commencement day of its powers in relation to the management of the members of staff of the Authority.
- (4) Except as otherwise agreed by a person referred to in subclause (1), the remuneration, existing or accrued rights, rights under a superannuation scheme and continuity of service of a member of staff are not affected, prejudiced or interrupted by the operation of that subclause.

10. Annual report for part of a year

- (1) The Board is to report as required by section 66 of the *Financial Administration and Audit Act 1985*, but limited to the period from 1 July preceding commencement day to commencement day, and Division 14 of Part II of that Act applies as if that period were a financial year of the Board.
- (2) Despite clause 3, the Board continues in existence for the purposes of subclause (1) and is entitled to receive from the Authority and its staff such assistance as it may require for that purpose.

11. Immunity to continue

Despite the repeal effected by section 46(1), where the Board had the benefit of any immunity in respect of an act, matter or thing done or omitted before commencement day, that immunity continues in that respect for the benefit of the Authority.

12. Exemption from State tax

- (1) In this clause —
“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* 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 Schedule; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of, giving effect to this Schedule.

13. Registration of documents

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Schedule.

14. Saving

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

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (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;
- (c) 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;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

Schedule 5 — Consequential amendments to various Acts

[s.47]

1. Constitution Acts Amendment Act 1899 amended

Part 3 of Schedule V of the *Constitution Acts Amendment Act 1899** is amended by deleting the item relating to the Zoological Gardens Board and inserting instead —

“

The Zoological Parks Authority established under the
Zoological Parks Authority Act 2001.

”

[* *Reprinted as at 19 May 2000.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 86-87 and Act No. 43 of 2000.]

2. Financial Administration and Audit Act 1985 amended

Schedule 1 of the *Financial Administration and Audit Act 1985** is amended by deleting “Zoological Gardens Board” and inserting instead —

“ Zoological Parks Authority ”.

[* *Reprinted as at 24 November 2000.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 157.]

3. Prevention of Cruelty to Animals Act 1920 amended

Section 23 of the *Prevention of Cruelty to Animals Act 1920** is amended by deleting “Zoological Gardens of Western Australia” and inserting instead —

“ Zoological Parks Authority ”.

[* *Reprinted as approved 3 August 1981.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 356.]

Defined Terms

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)
Account.....	3
assets.....	Sch 4
Authority.....	3
authorised person.....	43(1)
board.....	3
Board.....	Sch 4
business arrangement.....	10(4)
Chief Executive Officer.....	3, Sch 3
commencement day.....	Sch 4
committee.....	3
document.....	15(4)
emergency situation.....	30(5)
function.....	3
information.....	15(4)
latest draft plan.....	16(5), 20(5)
liability.....	Sch 4
member.....	3
member of staff.....	3
misbehaviour.....	Sch 3
owner.....	3
park management officer.....	3
participate.....	10(4)
repealed Act.....	Sch 4
right.....	Sch 4
State tax.....	Sch 4
Treasurer.....	3
vehicle.....	3
vehicle offence.....	42(1)
zoological park.....	3
zoological specimen.....	3