

STATE SUPPLY COMMISSION ACT 1991

(No. 5 of 1991)

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WESTERN AUSTRALIA

STATE SUPPLY COMMISSION ACT

No. 5 of 1991

AN ACT to establish the State Supply Commission, to arrange for and co-ordinate the supply of goods and services to, and disposal of goods on behalf of, public authorities and certain other persons and bodies, to regulate the supply of goods and services to public authorities, and the disposal of goods not required by public authorities, to monitor that supply and disposal, to repeal the *State Tender Board Act 1965* and for connected purposes.

[Assented to 6 June 1991.]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *State Supply Commission Act 1991*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation

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

“Commission” means the State Supply Commission established under section 4 (1);

“Department” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“efficient”, in relation to the supply or disposal of goods or services, means efficient having regard to considerations of time, economy and quality;

“member” means a member of the Commission;

“public authority” means—

(a) a department of the Public Service of the State established or deemed to have been established under the *Public Service Act 1978*; and

(b) an agency, authority or instrumentality of the Crown in right of the State;

“supply”, in relation to goods or services, means the acquisition, storage and distribution of those goods or services;

“supply policies” means supply policies issued under and in accordance with section 28.

PART 2—STATE SUPPLY COMMISSION

Division 1—Establishment, functions and powers

Commission established

4. (1) There shall be established a body to be known as the State Supply Commission.

(2) The Commission is a body corporate with perpetual succession and common seal and, subject to this Act, is capable of—

- (a) acquiring, holding and disposing of personal property;
- (b) suing and being sued; and
- (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The Commission is an agent of the Crown in right of the State.

Functions of Commission

5. The functions of the Commission are—

- (a) to develop, implement and review policies and practices regarding the supply of goods and services for, and by, public authorities and the efficient disposal of goods no longer required by a public authority;
- (b) to arrange for and co-ordinate the efficient supply of goods and services in accordance with this Act;
- (c) to arrange for and co-ordinate the efficient disposal of goods in accordance with this Act;
- (d) to monitor the process by which goods and services are supplied and goods are disposed of for, and by, public authorities, with particular regard to efficiency; and
- (e) to provide advice on matters relating to the supply of goods or services or disposal of goods, including matters related to management and training of staff and to facilitate the exchange of information on those matters between public authorities.

Powers of Commission

6. (1) The Commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting the generality of subsection (1), the Commission may—

- (a) enter into any contract or other arrangement, organize auctions, call for and award tenders;
- (b) direct any public authority to furnish to the Commission documents and other information regarding the supply of goods or services or disposal of goods for, or by, that public authority; and
- (c) act as an agent for a public authority.

Directions by Minister

7. (1) The Minister may give directions in writing to the Commission with respect to its functions and powers, including a direction requiring the Commission to have regard to a particular policy or principle, either generally or with respect to a particular matter, and the Commission shall give effect to any such direction.

(2) The text of any direction received by the Commission under subsection (1) shall be—

- (a) published in the *Gazette* within 28 days and laid before each House within 12 sitting days of its being published if Parliament is then in session or within 12 sitting days of the commencement of the next ensuing session; and
- (b) included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

Division 2—Membership, constitution, proceedings, etc.

Membership of Commission

8. (1) The Commission shall consist of—

- (a) a chairman, who shall be appointed by the Minister; and
- (b) 8 other members appointed by the Minister of whom—
 - (i) 5 shall be employed in, or members of, public authorities;

- (ii) one shall be nominated by the body known as the Confederation of Western Australian Industry (Incorporated);
- (iii) one shall be nominated by the body known as the Western Australian Chamber of Commerce and Industry (Incorporated); and
- (iv) one shall be nominated by the body known as the Trades and Labor Council of Western Australia.

(2) If, within 30 days of being requested in writing to do so, a body referred to in subparagraph (ii), (iii) or (iv) of subsection (1) (b) has not nominated a person to be a member, the Minister shall appoint such person to be a member as the Minister thinks fit and the person so appointed shall be deemed to have been nominated under the appropriate subparagraph of subsection (1) (b).

Remuneration of members

9. A member is entitled to such remuneration and allowances as the Minister from time to time determines.

Disclosure of pecuniary interests

10. (1) A member who has a direct or indirect pecuniary interest in a proposal before the Commission—

- (a) shall, as soon as the member is aware of the proposal, disclose the nature of the interest to the Commission; and
- (b) shall not take part in any deliberation or decision of the Commission with respect to the proposal.

(2) A disclosure made by a member under this section shall be recorded in the minutes of the Commission.

(3) For the purposes of this section, a member who is employed in, or a member of, a public authority shall not be regarded as having an interest in a proposal or contract only because the proposal or contract may benefit or affect the public authority.

(4) A member who fails to comply with subsection (1) is guilty of an offence and is liable to a penalty not exceeding \$5 000.

Proceedings not affected by irregularities

11. An act, decision or proceeding of the Commission, or an act or decision of a member or person acting under the direction of the Commission or a member, shall not be invalid or called into question by reason only of any defect or irregularity—

- (a) in the constitution of the Commission; or
- (b) in the appointment of a member.

Protection of Commission and members

12. A matter or thing done by the Commission or by a member or a person acting under the direction of the Commission or a member shall not, if the matter or thing was done in good faith for the purposes of this Act, subject that member or person personally to any action, liability, claim or demand.

Relationship of members to Public Service

13. Appointment of a person as a member of the Commission does not—

- (a) render the provisions of the *Public Service Act 1978* or any other Act applying to persons as officers of the Public Service of the State applicable to that person; or
- (b) affect or prejudice the application to that person of those provisions if they applied to the person at the time of the appointment.

Committees

14. (1) The Commission may from time to time—

- (a) establish any committee and—
 - (i) prescribe the functions, membership, constitution and procedures of the committee; and
 - (ii) appoint such members of the Commission and other persons as it thinks fit to be members of the committee;
- (b) discharge, alter or reconstitute the committee; and
- (c) give directions to the committee with respect to the performance of its functions.

(2) A committee shall comply with any direction of the Commission.

(3) Subject to this Act, a committee may determine its own procedure.

Members and proceedings—Schedule 1

15. Schedule 1 has effect with respect to the members and proceedings of the Commission.

Division 3—Staff

Public Service staff and use of staff and facilities of State Government

16. (1) Under and subject to the *Public Service Act 1978*, there shall be such officers of the Department as may be necessary to provide administrative, professional, scientific, technical, and other services to the Commission.

(2) The Commission may, by arrangement between it and the Minister concerned, and on such terms and conditions as are mutually arranged by it with that Minister and, if appropriate, with the Public Service Commissioner, make use, either full time or part time, of—

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency, authority or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facility of a department of the Public Service of the State or of a State agency, authority or instrumentality.

PART 3—SUPPLY OF GOODS AND SERVICES

Public authorities to comply with supply policies

17. (1) Subject to this Act, all public authorities, including all employees, members and officers of public authorities and all officers of the Public Service of the State, shall comply with supply policies.

(2) Subsection (1) applies notwithstanding any exemption granted under section 20 or 21.

Commission may advise and recommend

18. (1) The Commission shall provide advice or make recommendations to the Minister regarding any matter referred to it by the Minister, or any matter in respect of which the Commission is of the opinion it should provide advice to the Minister, in relation to—

- (a) policies and practices regarding the supply of goods and services or disposal of goods; or
- (b) the process by which goods and services are supplied and goods are disposed of for, and by, public authorities.

(2) The Commission may, if it thinks fit, provide advice or make recommendations to the Minister responsible for a public authority regarding any matter relating to—

- (a) policies and practices regarding the supply of goods and services or disposal of goods for the use of, or used by, the public authority;
- (b) the process by which goods and services are supplied and goods are disposed of for, or by, the public authority.

(3) All public authorities, including all employees, members and officers of public authorities and all officers of the Public Service of the State, shall comply with any direction given, on the advice or recommendation of the Commission, by the Minister responsible for the public authority.

Duty of Commission to arrange for supply of goods and services

19. (1) Subject to subsection (2), the Commission is responsible for arranging and co-ordinating the supply of all goods and services necessary for the operation of each public authority.

(2) The Commission is not responsible for arranging and co-ordinating the supply of goods and services—

- (a) where a public authority is specifically authorized to do so in respect of particular goods or services under any other written law; or
- (b) where an exemption exists in respect of those goods and services under section 20 or 21.

Total exemptions from section 19 (1)

20. An exemption from section 19 (1) exists in respect of all goods and services necessary for the operation of each public authority that is prescribed in the regulations for the purposes of this section as a public authority that is totally exempt from section 19 (1).

Partial exemptions from section 19 (1)

21. (1) An exemption from section 19 (1) exists in respect of goods and services necessary for the operation of a public authority to the extent, on the conditions and for the period of time that the Commission specifies in writing given to the public authority.

(2) The Commission may cancel an exemption granted under subsection (1), in writing given to the public authority concerned.

Public authority may exercise powers of Commission, in certain circumstances

22. Where a public authority that is a body corporate does not possess sufficient powers to take advantage of an exemption under section 20 or 21 in respect of goods or services necessary for its operation, that public authority may exercise such powers of the Commission as are necessary or convenient to enable the public authority to take advantage of the exemption, as if those powers were powers conferred on the public authority.

Commission may arrange for supply of goods and services to approved persons and bodies

23. The Commission may arrange for and co-ordinate the supply of any goods and services necessary for the operation of any person or body approved by the Commission for the purposes of this section and section 24 on the request of that person or body.

Disposal of goods

24. Where goods are no longer required by a public authority or any other person or body approved by the Commission for the purposes of this section and section 23 the public authority, person or body may request the Commission to arrange for and co-ordinate the disposal of the goods on its behalf and, if the Commission agrees to do so, it shall dispose of the goods by auction or otherwise.

Commission to monitor supply

25. (1) The Commission shall monitor and keep records regarding the process by which goods and services are supplied and goods are disposed of for, or by, public authorities, with particular regard to efficiency.

(2) The Commission shall collect such information as is necessary for it to monitor and keep records in accordance with subsection (1), including information regarding—

- (a) changes to the supply of goods and services and disposal of goods over time;
- (b) the efficiency with which the process of the supply of goods and services and disposal of goods is carried out;
- (c) the compliance by public authorities with supply policies; and
- (d) the use of management, technological and procurement techniques in the supply and management of goods and services and the disposal of goods.

**Public authority to provide information
at request of Commission**

26. Each public authority shall provide the Commission with such information as the Commission requests to enable it to carry out its functions under section 25.

PART 4—MISCELLANEOUS**Regulations**

27. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and, in particular, for and with respect to—

- (a) the efficient supply of goods and services for the use of public authorities and efficient disposal of goods no longer required by a public authority;
- (b) the conditions upon which contracts to supply goods and services to public authorities are to be made;

- (c) the preparation by public authorities of documents regarding supply procedures;
- (d) the procedures and practices to be followed when tenders are called, received, awarded and finalized;
- (e) the collection and provision of information to enable the Commission to monitor the process by which goods and services are supplied and goods are disposed of in accordance with section 25;
- (f) the disclosure of any pecuniary interest by persons involved in the process by which goods and services are supplied and goods are disposed of under this Act and the consequences of that disclosure;
- (g) the procedure for reviewing total and partial exemptions under sections 20 and 21;
- (h) facilitating the exchange of information between public authorities on matters relating to the supply of goods and services or disposal of goods, including matters relating to management and training of staff;
- (f) forms to be used for the purposes of this Act; and
- (j) fees for the purposes of this Act.

Supply policies

28. (1) The Commission may prepare, issue, amend and revoke policies to be known as “supply policies” with respect to policies and practices relating to the supply of goods and services and the disposal of goods under this Act for, or by, a public authority, but those policies shall not be inconsistent with this Act or the regulations.

(2) Supply policies may be issued—

(a) so as to apply—

- (i) at all times or at a specified time;
- (ii) to all public authorities and their subsidiary and related bodies or to specified public authorities or subsidiary or related bodies;

- (b) so as to require a matter affected by the supply policies to be—
 - (i) in accordance with a specified standard or specified requirement;
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
- (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body;
- (d) so as to empower the Commission by written direction issued generally or in a particular case to supplement the requirements of supply policies; and
- (e) so as to provide, or to empower the Commission to provide by written direction, in a specified case or class of case for the exemption of persons or things or a class of persons or things from the provisions of supply policies, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.

(3) The Commission shall cause to be published in the *Gazette* notice of the making, amendment or revocation of supply policies, but such a notice need not include the text of supply policies or the amendments.

(4) In subsection (2), “specified” means specified in the supply policies.

Contracts made by Commission

29. (1) In any contract made by the Commission for the purposes of this Act, the Commission does not act as agent for any public authority unless—

- (a) the contract expressly provides that the Commission acts as agent for a public authority; and
- (b) the Commission is authorized so to act by the public authority.

(2) Notwithstanding any rule of law to the contrary, for the purposes of any legal action taken in respect of a contract entered into by the Commission for the benefit, whether wholly or partly, of a public authority or other person or body who or which is not a party to the contract—

- (a) the Commission may recover damages for any loss suffered due to a breach of that contract as if the loss was suffered by the Commission, notwithstanding that the loss was suffered by the public authority or other person or body;
- (b) any moneys paid to the Commission in respect of loss suffered by the public authority or other person or body due to a breach of that contract shall be paid without any deductions, other than costs, to that public authority, person or body; and
- (c) any moneys for which the Commission would, but for this paragraph, be liable in respect of loss suffered by another party to the contract due to the actions of the public authority or other person or body shall be paid by the public authority, person or body.

Funds of Commission

30. (1) The funds available for the purpose of enabling the Commission to exercise and perform its powers, functions and duties under this Act consist of—

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys advanced by the Treasurer in any case in which the moneys standing to the credit of the account referred to in subsection (2) would be insufficient;
- (c) moneys received by the Commission from a public authority, or other person or body approved by the Commission for the purposes of sections 23 and 24, in respect of goods or services supplied or to be supplied, to the public authority, person or body; and
- (d) any moneys, other than moneys referred to in paragraph (a), (b) or (c), lawfully received by, made available to, or payable to the Commission.

(2) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at the Treasury to be called the "State Supply Commission Account".

(3) There shall be paid from the moneys from time to time in the account referred to in subsection (2)—

- (a) the remuneration and allowances payable to members in accordance with section 9; and
- (b) all costs and expenses incurred by the Commission for the purpose of giving effect to this Act.

Power to borrow from Treasurer

31. For the purposes of section 30 (1) (b), the Commission may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment, payment of interest or any other matter as the Treasurer imposes.

Application of Financial Administration and Audit Act 1985

32. 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 Commission.

Repeal

33. The *State Tender Board Act 1965** is repealed.

[*Act No. 36 of 1965 as amended by Act No. 89 of 1965.

Transitional and savings provisions —Schedule 2

34. Schedule 2 has effect in relation to the repeal effected by section 33.

Consequential amendments to other Acts —Schedule 3

35. The Acts referred to in the first column of Schedule 3 are amended in the manner set out in the second column of that Schedule.

Review of Act

36. (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of the Commission;
- (b) the need for the continuation of the functions of the Commission;
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and, as soon as is practicable after the preparation of the report, shall cause it to be laid before each House of Parliament.

SCHEDULE 1

(Section 15)

MEMBERS AND PROCEEDINGS OF THE COMMISSION

Definition

1. In this Schedule—

“chairman” means the chairman of the Commission.

Term of office of members

2. (1) A member shall be appointed for such term of office not exceeding 3 years as is specified in the member’s instrument of appointment on the conditions specified in that instrument.

(2) A member may be reappointed from time to time on the expiration of a term of office.

Delegation by Commission

3. (1) The Commission may delegate, by notice in writing, any of its powers, other than this power of delegation, as are specified in the notice to—

- (a) any committee established by it under section 14 or a member of such a committee;
- (b) any member; or
- (c) any officer, as defined under the *Public Service Act 1978*, of the Department,

and may vary or revoke any such delegation.

(2) The exercise of a power by a delegate under this clause shall be deemed to be the exercise of the power by the Commission.

Vacation of office

4. (1) A member may resign from office by notice in writing delivered to the Minister.

(2) A member may be removed from office by the Minister—

- (a) for mental or physical disability, incompetence, neglect of duty or misconduct;
- (b) if the member is an insolvent under administration, as that expression is defined in the *Companies (Western Australia) Code*;
- (c) if the member is absent without leave of the Commission from 3 consecutive meetings of the Commission of which the member has had notice;
- (d) for breach of a condition of appointment; or
- (e) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Commission.

Substitute members

5. (1) The Minister shall appoint at least one but not more than 3 substitute members.

(2) A substitute member appointed under subclause (1), when requested to do so by the chairman, shall act temporarily in the office of a member, other than the chairman, while that member is unable to act through illness, absence or any other cause.

(3) An appointment made under subclause (1) may be revoked by the Minister at any time.

(4) While acting under subclause (2) the appointee has all the functions and entitlements of the member in whose place the appointee is acting.

(5) No act or omission of a person acting in the place of another under this clause shall be questioned on the ground that the occasion for the acting had not arisen or had ceased.

General procedure concerning meetings

6. (1) The procedure for convening meetings of the Commission and the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.

(2) The first meeting of the Commission shall be convened by the chairman.

Presiding member

7. At a meeting of the Commission—

(a) the chairman shall preside; or

(b) in the absence of the chairman, a person elected by the members present at the meeting from among their number shall preside.

Voting

8. (1) If the votes of members present at a meeting and voting on a question are equally divided, the chairman or other person presiding shall have a casting vote in addition to a deliberative vote.

(2) A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present shall be the decision of the Commission.

Minutes

9. The Commission shall cause accurate minutes of each of its meetings to be recorded and preserved.

Common seal and execution of documents by Commission

10. (1) A document is duly executed by the Commission if—

(a) the common seal of the Commission is affixed in accordance with subclauses (2) and (3); or

(b) it is signed on behalf of the Commission by the member or members authorized by the Commission to do so.

(2) The common seal of the Commission shall not be affixed to any document except by resolution of the Commission.

(3) The common seal of the Commission shall be affixed to a document in the presence of the chairman and another member and each of them shall sign the document to attest that the common seal was so affixed.

(4) The common seal of the Commission shall—

- (a) be in a form determined by the Commission;
- (b) be kept in such custody as the Commission directs; and
- (c) not be used except as authorized by the Commission.

(5) When a document purporting to bear the common seal of the Commission is produced before any court, judge or person acting judicially, that court, judge or person shall unless the contrary is proved, presume that—

- (a) the document bears that common seal; and
- (b) that common seal was duly affixed to that document.

SCHEDULE 2

(Section 34)

TRANSITIONAL AND SAVINGS

Definitions

1. In this Schedule—

“Commencement” means the commencement of this Act;

“the Board” means the State Tender Board of Western Australia established under the *State Tender Board Act 1965*.

Assets, liabilities, etc.

2. On the commencement—

- (a) all rights, property and assets that were, immediately before the commencement, vested in the Board are, by force of this paragraph, vested in the Commission;
- (b) the Commission becomes, by force of this paragraph, liable to pay and discharge all the debts, liabilities and obligations of the Board that existed immediately before the commencement;
- (c) the Commission shall take delivery of all papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Board;

- (d) any proceedings that immediately before the commencement might have been brought or continued by or against the Board may be brought or continued by or against the Commission; and
- (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 Commission.

Agreements and instruments

3. Unless the context indicates otherwise, any agreement or instrument which subsisted immediately before the commencement and to which the Board was a party has effect on and after the commencement as if—

- (a) the Commission were substituted for the Board as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to the Board were (except in relation to matters that occurred before the commencement) a reference to the Commission.

Former Board members

4. A person who was a member of the Board immediately before the commencement ceases to be a member on the commencement.

References

5. References to the Board and the chairman of the Board in any written law shall, unless because of the context it would be incorrect so to do, be read and construed as references to the Commission and the chairman of the Commission, respectively.

Interpretation Act 1984 not affected

6. The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 33.

SCHEDULE 3

(Section 35)

CONSEQUENTIAL AMENDMENTS

*Constitution Acts
Amendment Act 1899* In Part 3 of Schedule V the following item is inserted in the appropriate alphabetical position—

“ The State Supply Commission established under the *State Supply Commission Act 1989*. ”.

*Financial
Administration and
Audit Act 1985* (1) In section 96 by deleting “Government stores and” in paragraph (f).
(2) In Schedule 1 by inserting in the appropriate alphabetical position the following item—

“ State Supply Commission ”.

*Parliamentary
Commissioner Act
1971* In the Schedule—
(a) the following item is inserted in the appropriate alphabetical position—
“ State Supply Commission established under the *State Supply Commission Act 1989*. ”;
and
(b) the following item is deleted—
“ State Tender Board of Western Australia established under the *State Tender Board Act 1965*. ”.
