

WESTERN AUSTRALIA

SOLAR ENERGY RESEARCH AMENDMENT ACT

No. 88 of 1987

AN ACT to amend the *Solar Energy Research Act 1977*, the *Constitution Acts Amendment Act 1899* and the *Financial Administration and Audit Act 1985* and to validate certain transactions.

[Assented to 9 December 1987]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Solar Energy Research Amendment Act 1987*.

Principal Act

2. In this Act the *Solar Energy Research Act 1977** is referred to as the principal Act.

[*Act No. 51 of 1977 as amended by Act No. 98 of 1985.]

Commencement

3. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 21 shall come into operation on the day on which the principal Act is repealed under section 43 of the principal Act as amended by this Act.

Section 3 repealed

4. Section 3 of the principal Act is repealed.

Section 4 amended

5. Section 4 of the principal Act is amended—

- (a) by deleting the definitions of “Acting Chairman”, “Chairman”, “Director”, “member of the State Energy Commission”, “section”, “subsection”, “the Advisory Committee” and “the Board”;
- (b) in the definition of “Commissioner” by deleting “the person appointed under section 8A of the State Energy Commission Act, 1945 to be the Commissioner and Chief Executive Officer” and substituting the following—

“ person holding office under section 12 of the *State Energy Commission Act 1979* as the Commissioner ”;
- (c) by inserting after the definition of “the Institute” the following definition—

“ “the Liquidator” means the person holding office under section 38 (1) as the liquidator of the affairs of the Institute; ”; and

(d) in the definition of “the State Energy Commission” by deleting—

(i) “means the” and substituting the following—

“ means The ”; and

(ii) “established by the State Energy Commission Act, 1945” and substituting the following—

“ preserved and continued in existence by section 7 of the *State Energy Commission Act 1979* ”.

Section 7 amended

6. Section 7 of the principal Act is amended by repealing subsections (3), (4) and (5).

Parts III and IV repealed

7. (1) Parts III and IV of the principal Act are repealed.

(2) A person who, immediately before the commencement of this section, held office under Part III or IV of the principal Act ceases so to hold office on that commencement.

Section 26 amended

8. Section 26 of the principal Act is amended in subsection (1) by deleting paragraphs (c) and (d) and substituting the following paragraph—

“ (c) the remuneration, if any, determined under section 38 (6). ”.

Section 27 repealed

9. Section 27 of the principal Act is repealed.

Section 28 repealed

10. Section 28 of the principal Act is repealed.

Section 31 amended

11. Section 31 of the principal Act is amended in subsection (3) by deleting “Board” and substituting the following—

“ Liquidator ”.

Section 32 amended

12. Section 32 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) This section applies to every person who—

(a) prior to the commencement of section 12 of the *Solar Energy Research Amendment Act 1987* has been the Chairman or a Director, has acted in the office of the Chairman or a Director, or has been a member or a deputy of a member of the Advisory Committee;

(b) is rendering or has rendered services to the Institute under section 29 or 30; or

(c) is or has been the Liquidator. ”;

(b) in subsections (3) (b) and (5) (b) by deleting “the annual report or financial statements furnished pursuant to subsection (2) of section 35” and substituting in each case the following—

“ the annual report prepared and submitted under section 66 of the *Financial Administration and Audit Act 1985* or the final report prepared and submitted under that section as read with section 42, as the case requires ”;

(c) by inserting after subsection (5) the following subsection—

“ (5a) A person to whom this section applies is not personally liable in civil proceedings, and the Crown in right of the State is not liable, for any act done, default made or statement issued—

(a) prior to the commencement of section 12 of the *Solar Energy Research Amendment Act 1987*, by the Board or the Advisory Committee; or

(b) whether prior to or after the commencement of section 12 of the *Solar Energy Research Amendment Act 1987*, by any person to whom this section applies,

in good faith in the course of the operations of the Institute. ”; and

(d) in subsection (6) by deleting “or fails to comply with a provision of this section” and substituting the following—

“ subsection (2), (3) (a) or (5) (a) ”.

Section 33 repealed

13. Section 33 of the principal Act is repealed.

Section 34 amended

14. Section 34 of the principal Act is amended by deleting “Board” and substituting the following—

“ Liquidator ”.

Section 35 amended

15. Section 35 of the principal Act is amended in subsection (1) by deleting “Board” and substituting the following—

“ Liquidator ”.

Section 36 repealed and substituted

16. Section 36 of the principal Act is repealed and the following section is substituted—

Regulations

“ 36. (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, and, in particular, providing for the form, custody and use of the common seal of the Institute and for the liquidation of the affairs of the Institute in preparation for the repeal of this Act under section 43.

(2) Regulations providing for the liquidation referred to in subsection (1) may make provision for any matter—

- (a) provided for by any enactment relating to the winding up of companies in this State; and
- (b) not inconsistent with Part VII. ”.

Part VII inserted

17. The principal Act is amended by inserting after Part VI the following Part—

“ PART VII—LIQUIDATION OF AFFAIRS OF INSTITUTE

Interpretation in Part VII

37. In this Part, unless the contrary intention appears—

“appointed day” means day on which section 17 of the *Solar Energy Research Amendment Act 1987* comes into operation;

“assets”, in relation to the Institute, means legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action.

Liquidator of affairs of Institute

38. (1) The Minister shall on the appointed day, or as soon as is practicable thereafter, appoint a member within the meaning of the *State Energy Commission Act 1979* to be the liquidator of the affairs of the Institute.

(2) Subject to this section, the Liquidator has all the functions and powers of the Institute for the purpose of liquidating the affairs of the Institute in preparation for the repeal of this Act under section 43 and has such additional powers and functions as are necessary or desirable for that purpose.

(3) Without limiting the generality of subsection (2), the Liquidator may for the purpose referred to in that subsection—

- (a) on behalf of the Institute and with the consent in writing of the Minister—
 - (i) compound or compromise any claim or demand made, or any debt or sum of money owing, to or by the Institute;
 - (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Institute or whereby the Institute may be rendered liable;
 - (iii) compromise any debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Institute and a debtor or person apprehending liability to the Institute, and all questions in any way relating to or affecting the assets or the liquidation of the affairs of the Institute, on such terms as are agreed, and take any security for the discharge of, and give a complete discharge in respect of, any such debt, liability or claim; or
 - (iv) sell or otherwise dispose of, in any manner, all or any part of the assets of the Institute;

- (b) do all acts and execute in the name and on behalf of the Institute all deeds, receipts and other documents and for that purpose use when necessary the common seal of the Institute;
- (c) subject to the *Bankruptcy Act 1966* of the Commonwealth, prove on behalf of the Institute in the bankruptcy of any debtor of the Institute or under any deed executed under that Act; or
- (d) take out letters of administration of the estate of a deceased debtor, and do any other act necessary for obtaining payment of any moneys due from a debtor, or his estate, that cannot be conveniently done in the name of the Institute.

(4) The Liquidator may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to any person of whose services the Institute makes use under section 30 any of his powers or duties under this Act, other than this power of delegation.

(5) The Liquidator shall comply with any direction given to him by the Minister—

- (a) in relation to the performance of any function, or the exercise of any power, by the Liquidator; and
- (b) for the purpose referred to in subsection (2).

(6) The Liquidator shall receive such remuneration, if any, as is determined by the Minister.

Steps to be taken in liquidation of affairs of Institute

39. (1) The Institute shall, on and after the appointed day, cease to perform its functions and exercise its powers except so far as is in the opinion of the Liquidator required for the purpose referred to in section 38 (2).

(2) The Liquidator shall, for the purpose referred to in section 38 (2), collect and take into his custody or under his control all the assets of the Institute, and apply those assets in the discharge of all the liabilities of the Institute, and take such other steps as are necessary or desirable for that purpose.

(3) For the purpose of applying the assets of the Institute in the discharge of all its liabilities, the Liquidator shall as soon as is practicable after the appointed day—

- (a) by notice published in the *Gazette* invite all creditors of the Institute; and
- (b) if he knows or suspects that any persons are creditors of the Institute, on or before the date of the publication referred to in paragraph (a) serve on those persons invitations in writing,

to submit to him proof of their debts and claims within such period of not less than 21 days after the day of publication of the notice referred to in paragraph (a) as is specified in that notice.

(4) The Liquidator shall—

- (a) compile a list of all proofs submitted to him within the period referred to in subsection (3) in response to the notice published, or any invitation served, under that subsection; and
- (b) admit or reject, wholly or in part, each proof appearing on the list compiled under this subsection, but may, before so admitting or rejecting a proof, in writing served on the creditor concerned require that creditor to furnish the Liquidator with such further evidence in support of the relevant debt or claim as is specified in that requirement within such period of not less than 14 days from the date of that service as is so specified.

(5) The Institute is not liable in respect of a debt or claim proof of which—

- (a) subject to any decision made by the Supreme Court under section 41, is rejected under subsection (4); or
- (b) is not submitted to the Liquidator within the period referred to in subsection (3).

(6) All debts payable on a contingency and all claims against the Institute (present or future, certain or contingent, ascertained or sounding only in damages) are admissible to proof against the Institute, a just estimate being made by the Liquidator so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(7) The amount of a debt of the Institute (including a debt that is for or includes interest) is to be computed for the purposes of this Part as at the appointed day.

(8) All debts or claims proved under this section—

- (a) rank equally; and
- (b) if the assets of the Institute are insufficient to meet them in full, shall be paid proportionately.

(9) The Liquidator shall—

- (a) if there is a surplus of assets over liabilities after the discharge referred to in subsection (2); or
- (b) on receiving a request made under subsection (11) (b) in respect of the surplus referred to in paragraph (a),

as the case requires, draw up a scheme of distribution in respect of the surplus referred to in paragraph (a) and submit that scheme to the Governor through the Minister.

(10) A scheme of distribution drawn up under subsection (9) may create or impose in respect of particular assets trusts, conditions or stipulations that those assets be applied towards—

- (a) a specified solar energy research project;
- (b) solar energy research projects of a specified class; or
- (c) a specified field of solar energy research,

by the persons to whom or which those assets are distributed.

(11) On receiving a scheme of distribution submitted to him under subsection (9), the Governor shall—

- (a) if he approves of that scheme, cause that scheme to be published in the *Gazette*; or
- (b) if he does not approve of that scheme, reject it and request the Liquidator through the Minister to draw up a fresh scheme of distribution and submit it to him under that subsection.

(12) On the publication under subsection (11) (a) of a scheme of distribution, the Liquidator shall forthwith distribute the assets to which that scheme relates in accordance with that scheme.

Liquidator to notify date of completion of duties

40. The Liquidator shall, when he has completed the performance of the duties imposed on him by sections 38 and 39, notify the Minister in writing of the day on which that completion took place.

Appeals from acts, omissions or decisions of Liquidator

41. A person aggrieved by any act, omission or decision of the Liquidator may appeal to the Supreme Court in respect of that act, omission or decision and the Supreme Court may confirm, reverse or modify that act or decision, or remedy that omission, as the case requires, and make such orders, including orders in respect of costs, and give such directions as it thinks fit.

Application of *Financial Administration and Audit Act 1985*

42. (1) Subject to subsection (2), 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 Institute and its operations.

(2) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*—

(a) section 54 of that Act shall have effect in relation to the Institute as if it had been enacted in the following form—

Accountable authority for
Solar Energy Research Institute
of Western Australia

“ 54. The Liquidator as defined by the *Solar Energy Research Act 1977* shall be the accountable authority for the Institute as defined by that Act and shall be responsible to the Minister for the financial administration of the services under the control of that Institute. ”;

- (b) section 66 of that Act shall have effect in relation to the Institute as if it had been enacted in the following form—

Accountable authority of Solar
Energy Research Institute of
Western Australia to report to
Minister

“ 66. The accountable authority of the Institute as defined by the *Solar Energy Research Act 1977* shall, as soon as is practicable after the appointed day as defined in Part VII of that Act and, in any event, within 4 months after that appointed day, cause to be prepared and submitted to the Minister a final report containing—

- (a) financial statements relating to that Institute for—

(i) the period commencing on 1 January 1987 and ending immediately before that appointed day; and

(ii) the period commencing on that appointed day and ending on the day notified under section 40 of that Act;

- (b) a copy of the scheme of distribution published under section 39 (11) of that Act;

and

- (c) such other information relating to that Institute as the Minister may direct in writing. ”;

- (c) section 67 of that Act shall have effect in relation to the Institute as if it had been enacted in the following form—

Financial statements of Solar
Energy Research Institute of
Western Australia

“ 67. (1) Unless the Treasurer otherwise approves, the financial statements referred to in section 66 (a)

shall be prepared on an accrual accounting basis and shall consist of—

- (a) a statement of financial transactions of the Institute as defined by the *Solar Energy Research Act 1977*;
- (b) a statement of the financial position of the Institute as defined by the *Solar Energy Research Act 1977*;
- (c) proper and adequate notes to those financial statements; and
- (d) such other financial statements and information as are directed by Treasurer's Instructions, together with such other financial information as the Minister requires.

(2) The financial statements referred to in subsection (1) shall—

- (a) present fairly the financial transactions of the Institute referred to in that subsection during the periods referred to in section 66 (a);
 - (b) if a statement of the financial position referred to in subsection (1) (b) is required to be prepared, present fairly that financial position; and
 - (c) be certified in the manner required by Treasurer's Instructions. ”;
- (d) section 68 of that Act shall have effect in relation to the Institute as if it had been enacted in the following form—

Accountable authority of
Solar Energy Research Institute of
Western Australia to submit
financial statements, etc. to
Auditor General

- “ 68. The accountable authority of the Institute as defined by the *Solar Energy Research Act 1977* shall, as soon as is practicable and, in any event, within 6

months after the appointed day as defined in Part VII of that Act, cause to be submitted to the Auditor General the financial statements and other information referred to in section 66 (a) and (c). ”;

- (e) section 69 of that Act shall have effect in relation to the Institute as if the references to “each annual report” and “the annual report” in that section were references to “the final report”;
- (f) section 70 of that Act shall have effect in relation to the Institute as if the reference to—
 - (i) “a statutory authority” in that section were a reference to “the Institute as defined by the *Solar Energy Research Act 1977*”;
 - (ii) “end of the financial year of that statutory authority” in that section were a reference to “day notified under section 40 of that Act”; and
 - (iii) “annual report” in that section were a reference to “final report”;
- (g) section 93 (1) of that Act shall have effect in relation to the Institute as if it had been enacted in the following form—
 - “ (1) The Auditor General shall, within 3 months of receiving the financial statements submitted to him under section 68, prepare and sign an opinion on the audit of those financial statements, and shall state whether or not in his opinion—
 - (a) those financial statements are based on proper accounts and records;
 - (b) those financial statements have been properly drawn up so as to present fairly the transactions for both of the periods referred to in section 66 (a) and, as the case requires, the financial position at the end of the second of those periods; and
 - (c) the controls exercised by the Institute as defined by the *Solar Energy Research Act 1977* were adequate to provide reasonable assurance that the receipt, expenditure and

investment of moneys and the acquisition and disposal of public property or other property and incurring of liabilities have been in accordance with that Act. ”;

(h) sections 93 (2) (c) and 94 (1) (c) of that Act shall have effect in relation to the Institute as if the references to—

(i) “a statutory authority’s financial statements” in those sections were references to “the financial statements of the Institute as defined by the *Solar Energy Research Act 1977*”; and

(ii) “the statutory authority” in those sections were references to “that Institute”;

and

(i) sections 42 and 44 of that Act shall not have effect in relation to the Institute.

Repeal of Act

43. When the requirements of the *Financial Administration and Audit Act 1985* as read with section 42 have been complied with in respect of the Institute and its operations, this Act shall be repealed on such day as is fixed by proclamation. ”.

References to Board of Directors of Solar Energy Research Institute

18. (1) References to the Board in a written law in force immediately before the commencement of this section shall, unless because of the context it would be inappropriate to do so, be read and construed as references to the Liquidator.

(2) In subsection (1)—

“the Board” has the meaning given by the principal Act before its amendment by this Act;

“the Liquidator” has the meaning given by the principal Act after its amendment by this Act.

Validation

19. (1) Any payments, grants or reimbursements—

- (a) payable by the Institute under the principal Act before its amendment by this Act; and
- (b) made or purporting to have been made during the period commencing on 3 April 1987 and ending on the commencement of this section by or on behalf of the Institute which would, had they been made by the Board under the principal Act before its amendment by this Act, have been validly and lawfully made,

shall be deemed to have been validly and lawfully made.

(2) Without limiting the generality of subsection (1), any payments, grants or reimbursements—

- (a) payable by the Institute under the principal Act before its amendment by this Act; and
- (b) made or purporting to have been made during the period referred to in subsection (1) (b) by the State Energy Commission on behalf of the Institute and with the consent, or at the direction, of the Minister to whom the administration of the *State Energy Commission Act 1979* was at the relevant time committed by the Governor,

shall be deemed to have been validly and lawfully made on behalf of the Institute.

(3) In this section—

“the Board” has the meaning given by the principal Act before its amendment by this Act;

“the Institute” and “the State Energy Commission” have the respective meanings given by the principal Act.

***Constitution Acts Amendment Act 1899* amended**

20. Schedule V to the *Constitution Acts Amendment Act 1899** is amended—

- (a) in Division 2 of Part 2 by deleting “The Solar Energy Advisory Committee established under the Solar Energy Research Act 1977.”; and

- (b) in Part 3 by deleting “The Board of Directors of the Solar Energy Research Institute of Western Australia constituted under the Solar Energy Research Act 1977.”.

*[*Reprinted as approved 26 June 1984 and subsequently amended by Acts Nos. 75 and 78 of 1984, 10, 97 and 101 of 1986 and 21 and 32 of 1987.]*

Financial Administration and Audit Act 1985 amended

21. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting “Solar Energy Research Institute of Western Australia”.

*[*Reprinted as at 4 March 1987 and subsequently amended by Act No. 32 of 1987.]*
