



AUSTRALIAN CAPITAL TERRITORY

Kingston Foreshore Development Authority Act 1999

No. 89 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Kingston Foreshore Development Authority Act 1999

No. 89 of 1999

An Act to establish the Kingston Foreshore Development Authority, and for related purposes

[Notified in ACT Gazette S65: 23 December 1999]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

This Act is the *Kingston Foreshore Development Authority Act 1999*.

2 Commencement

- (1) Section 1 and this section commence on the day this Act is notified in the Gazette.
- (2) The remaining provisions commence on a day or days fixed by the Minister by notice in the Gazette.
- (3) However, if a provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the first day after that period.

3 Definitions

In this Act, the following definitions apply unless the contrary intention appears:

appointed member means a member appointed under paragraph 11 (1) (a).

authority means the Kingston Foreshore Development Authority established under section 5.

CEO means the person holding the office of chief executive officer mentioned in section 21.

chairperson means the chairperson of the authority.

deputy chairperson means the deputy chairperson of the authority.

development area—see section 4.

Financial Management Act means the *Financial Management Act 1996*.

meeting means a meeting of the authority.

member means a member of the authority.

National Capital Plan means the Plan defined in section 4 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

public servant member means the member nominated under section 14.

quarter means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in a year.

Territory Plan means the Territory Plan in effect for the time being under the *Land (Planning and Environment) Act 1991*.

4 Development area

(1) Subject to subsection (2), the Kingston Foreshore Development Area is the area consisting of—

- (a) the area referred to as Area 8L, and Water Feature Pg within the division of Kingston, in the Territory Plan; and
- (b) the area consisting of a strip of land 7 metres wide and extending along the south-eastern shore of Lake Burley Griffin from the eastern edge of Bowen Park to the western bank of Jerrabomberra Creek at its junction with that lake.

(2) The Minister may, by signed instrument notified in the Gazette, vary the area from time to time.

PART 2—CORPORATE STATUS

Division 2.1—Establishment, functions, powers and limitations

5 Establishment

- (1) The Kingston Foreshore Development Authority is established.
- (2) The authority—
 - (a) is a corporation; and
 - (b) has a common seal.
- (3) Every court, and every person acting judicially, must—
 - (a) take judicial notice of—
 - (i) the common seal; and
 - (ii) the signature of a member; and
 - (b) presume, in the absence of proof to the contrary, that the common seal was duly affixed to any document produced or tendered to the court or person acting judicially.

6 Functions

- (1) The functions of the authority are—
 - (a) to promote, coordinate, develop and manage the development area on behalf of the Territory; and
 - (b) to carry out works for the development and enhancement of the development area; and
 - (c) to perform such other functions as are conferred on the authority by or under this Act or another law of the Territory.
- (2) The authority must perform its functions—
 - (a) in a manner that is consistent with the social and economic needs of the Territory; and
 - (b) in accordance with prudent commercial principles; and
 - (c) in consultation with residents of the Territory and, in particular, of Kingston; and
 - (d) in a manner that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates; and
 - (e) where its activities affect the environment—in compliance with the principles of ecologically sustainable development.

(3) For paragraph (2) (e), ecologically sustainable development is taken to require the effective integration of economic and environmental considerations in decision-making processes and to be achievable through implementation of the following principles:

- (a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (b) the inter-generational equity principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

(4) This section applies subject to the provisions (as far as material) of sections 8, 9 and 10, Part 4 and sections 40 and 47.

7 Powers

(1) The authority has power to do all things necessary and convenient to be done in connection with the performance of its functions.

(2) Without limiting subsection (1), the authority may—

- (a) in accordance with any authorisation of the Executive, grant leases of land (including leases to the authority) on behalf of the Executive; and
- (b) hold leases of, or any other estate or interest in, land; and
- (c) construct roads, lanes, footpaths and passageways; and
- (d) construct buildings, structures and facilities (including community facilities) and manage and maintain them, or participate in such construction, management or maintenance; and
- (e) carry out any works and operations considered necessary for the purpose of rendering land suitable for professional, commercial, industrial, residential or community purposes; and
- (f) occupy and use any land or building; and
- (g) erect, alter, repair, renovate or demolish buildings or structures; and
- (h) maintain and manage land, buildings, structures, works or other property; and

- (i) make charges for work done or services rendered; and
 - (j) form, or participate in the formation of, companies; and
 - (k) enter into partnerships or participate in joint ventures; and
 - (l) enter into any other contract or arrangement with any person for the doing of anything that the authority is authorised to do under this or any other Act; and
 - (m) subscribe for or purchase shares in, or debentures or other securities of, companies; and
 - (n) act as agent for other persons; and
 - (o) appoint agents or attorneys.
- (3) For subsections (1) and (2), the authority may exercise its powers and perform its functions on or in relation to land (including buildings, structures, roads, lanes, footpaths and passageways) within or outside the development area.
- (4) This section applies subject to the provisions (as far as material) of sections 8, 9 and 10, Part 4 and sections 40 and 47.

8 Limitations on formation of companies etc

- (1) The authority must not, without the written approval of the Minister—
- (a) subscribe for or purchase shares in, or debentures or other securities of, a company; or
 - (b) form, or participate in the formation of, a company.
- (2) Any approval under subsection (1)—
- (a) must relate only to a particular company or proposed company; and
 - (b) may be given subject to specified conditions and restrictions.
- (3) Where the authority (with the written approval of the Minister) does an act mentioned in paragraph (1) (a) or (b)—
- (a) the authority must promptly notify the Minister of the act; and
 - (b) the Minister must—
 - (i) cause to be prepared a statement setting out particulars of, and the reasons for, the act; and

- (ii) cause a copy of the statement to be laid before the Legislative Assembly within 6 sitting days after being notified of the act.

(4) Before laying a copy of a statement before the Legislative Assembly, the Minister may delete from it any material that is commercially sensitive, but in that case the Minister must, at the same time, lay before the Legislative Assembly a further statement setting out the general nature of the material deleted and the reason for the deletion.

9 Controlling interests

(1) If the authority holds a controlling interest in a company, it must endeavour to ensure that—

- (a) the Auditor-General is appointed auditor for the company; and
- (b) that the company does not do anything that the authority itself is not empowered to do.

(2) Without limiting the generality of paragraph (1) (b), the authority must endeavour to ensure that a company in which it holds a controlling interest does not—

- (a) borrow money otherwise than from the Territory or Commonwealth; or
- (b) raise money otherwise than by borrowing;

except—

- (c) with the written approval of the Minister for the time being administering the Financial Management Act; and
- (d) on terms and conditions that are specified in, or consistent with, the approval.

(3) Subsection (2) applies to a borrowing or raising of money whether the money is borrowed or raised by dealing in securities or otherwise, and whether or not the money is borrowed or raised, in whole or in part, in a currency other than Australian currency.

(4) For subsection (2)—

- (a) the issue by a company of an instrument acknowledging a debt in consideration of the payment or deposit of money or of the provision of credit; or
- (b) the obtaining of credit by the company;

must, to the extent of the amount of that money or of that credit, as the case may be, be taken to be a borrowing by that company.

(5) Paragraph (2) (b) does not apply to a raising of money where that money is for payment, in good faith, for the provision of services or the sale, rental or hiring out of property (including an estate or interest in land).

(6) An approval under paragraph (2) (c) may be given in relation to a particular transaction or class of transactions.

10 Limitations on participation in joint ventures

(1) The authority must not, without the written approval of the Minister, participate in a joint venture.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to a particular proposed joint venture; and
- (b) may be given subject to specified conditions and restrictions.

(3) Where the authority enters into an agreement for a joint venture, the Minister must—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the joint venture; and
- (b) cause a copy of the statement to be laid before the Legislative Assembly—
 - (i) the expiry of the period (if any) during which the disclosure of the joint venture would, in the Minister's opinion, adversely affect the commercial interests of the authority; or
 - (ii) if there is no such period—the agreement is entered into.

(4) Before laying a copy of a statement before the Legislative Assembly, the Minister may delete from it any material that is commercially sensitive, but in that case the Minister must, at the same time, lay before the Legislative Assembly a further statement setting out the general nature of the material deleted and the reason for the deletion.

(5) Where the authority is able to control the things done by a joint venture in which it is a participant, it must endeavour to ensure that—

- (a) the Auditor-General is appointed auditor for the joint venture; and
- (b) the joint venture does not do anything that the authority itself is not empowered to do.

Division 2.2—Membership

11 Constitution

- (1) The authority consists of 8 members, as follows:
 - (a) 6 persons appointed by the Minister in accordance with clause 1 of the Schedule;
 - (b) the CEO;
 - (c) the public servant member.
- (2) The authority may perform its functions and exercise its powers despite any vacancy in its membership.
- (3) A person acting under section 16 or 24 is, while so acting, a member of the authority.

12 Chairperson and deputy chairperson

- (1) The authority is to have a chairperson and a deputy chairperson.
- (2) The Minister must, from time to time, by signed instrument, appoint an appointed member as chairperson.
- (3) A person so appointed ceases to be the chairperson if—
 - (a) the person ceases to be an appointed member; or
 - (b) the Minister, by signed instrument, removes the person as chairperson.
- (4) The members must, from time to time, at a meeting elect a member (other than the chairperson) as deputy chairperson.
- (5) A person so elected ceases to be the deputy chairperson if—
 - (a) the person ceases to be a member; or
 - (b) the person becomes the chairperson; or
 - (c) the members at a meeting pass a motion, of which at least 7 days notice has been given, to remove the person as deputy chairperson.

13 Appointed members

The Schedule has effect in relation to the appointed members.

14 Public servant member

The Minister must, by signed instrument, nominate a person who holds an office under the *Public Sector Management Act 1994* as the public servant member of the authority.

15 Leave of absence

The Minister may, in writing, grant leave of absence to an appointed member or the public servant member on such terms and conditions as to remuneration and otherwise as the Minister determines.

16 Acting appointments or nominations

(1) The Minister may, by signed instrument, appoint a suitable person to act as an appointed member, or nominate a suitable person to act as the public servant member—

- (a) during a vacancy in the office of the member, whether or not an appointment or a nomination has previously been made to that office; or
- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

(2) Before appointing or nominating a person, the Minister must consider the suitability of the person for appointment or nomination, having regard to the person's expertise and knowledge.

(3) A person must not act as a member continuously for more than 12 months.

(4) Anything done by or in relation to a person acting, or purporting to act, under an appointment or a nomination under subsection (1) is not invalid on the ground that—

- (a) the occasion for the appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the appointment; or
- (c) the person had acted as a member continuously for more than 12 months; or
- (d) the appointment had ceased to have effect; or
- (e) the occasion to act had not arisen or had ceased.

Division 2.3—Meetings

17 Convening meetings

- (1) The chairperson, or if the chairperson cannot do so, the deputy chairperson, must convene such meetings—
- (a) as the chairperson or the deputy chairperson, as the case requires, considers necessary for the efficient performance of the functions of the authority; or
 - (b) as the Minister directs by notice in writing given to the chairperson or the deputy chairperson.
- (2) The CEO must convene a meeting at the request of 3 members (1 of whom may be the CEO).

18 Procedure

- (1) The chairperson must preside at all meetings at which the chairperson is present.
- (2) If the chairperson is not present at a meeting the deputy chairperson must preside if the deputy chairperson is present.
- (3) If the chairperson and the deputy chairperson are both absent from a meeting, the members present must elect 1 of their number to preside.
- (4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.
- (5) Questions arising at a meeting must be decided by a majority of the votes of the members present and voting.
- (6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.
- (7) The authority must keep minutes of its proceedings.
- (8) The authority may hold a meeting by means of telephone, television or any other device which permits instantaneous audio communication (with or without visual communication).
- (9) A resolution in writing, if it is signed by every member, takes effect as a resolution passed at a meeting.

19 Quorum

At a meeting, 4 members constitute a quorum.

20 Disclosure of interest

(1) A member who has a direct or indirect pecuniary or personal interest in a matter which has been submitted for consideration by the authority must disclose the nature of the interest at a meeting as soon as practicable after the relevant facts have come to the member's knowledge.

(2) The member presiding at a meeting at which an interest is disclosed must cause that disclosure to be recorded in the minutes of the meeting.

(3) A member disclosing an interest must not, unless the authority determines otherwise—

- (a) be present during any deliberation of the authority with respect to the relevant matter; or
- (b) take part in any decision of the authority with respect to that matter.

(4) A member disclosing an interest must not—

- (a) be present during any deliberation of the authority with respect to a determination referred to in subsection (3); or
- (b) take part in any decision of the authority with respect to such a determination.

(5) The chairperson must give a written report to the Minister about any determination of the authority under subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

(6) The chairperson must, from time to time, give to the Minister a statement of all disclosures of interest made under subsections (1) and (2), and the Minister must cause a copy of the statement to be laid before the relevant committee of the Legislative Assembly within 14 days after receiving it.

(7) A statement under subsection (1) or (2) is confidential to the relevant committee and must not be published in any way.

(8) In subsection (6)—

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for the purposes of subsection (6); or
- (b) where no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

PART 3—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 3.1—Chief executive officer

21 Office of CEO

- (1) The chief executive must create and maintain in the government service an executive office of Chief Executive Officer (CEO) of the authority.
- (2) The CEO is the person for the time being holding, or performing the duties of, that office.
- (3) The CEO is appointed by the authority after consultation with the Minister.
- (4) Subject to this Act, the CEO holds office on the terms and conditions (in respect of matters not determined under the *Remuneration Tribunal Act 1995*) determined in writing by the authority.
- (5) A retiring CEO is eligible for reappointment.
- (6) A person appointed to be the CEO must, as soon as practicable after being appointed and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.
- (7) If the CEO has or acquires a direct or indirect pecuniary interest in a matter that, to his or her knowledge, is being considered or about to be considered by the authority, the CEO must give written notice to the Minister of that interest.

22 Leave of absence

The authority may, in writing, grant leave of absence to the CEO.

23 CEO's main function

The CEO must, subject to and in accordance with the general directions of the authority, manage the affairs of the authority.

24 Acting CEO

- (1) The Minister may, by signed instrument, appoint a suitably qualified and experienced person to act as CEO—
 - (a) during a vacancy in the office of CEO, whether or not an appointment has previously been made to that office; or

- (b) during any period, or during all periods, when the CEO is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office.
- (2) A person must not act as CEO continuously for more than 12 months.
- (3) Subsections 21 (6) and (7) apply (as far as practicable) to a person acting as CEO as if references in those subsections to the CEO were references to a person acting as CEO.
- (4) Anything done by or in relation to a person acting, or purporting to act, under an appointment under subsection (1) is not invalid because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) there is a defect or irregularity in connection with the appointment; or
 - (c) the person had acted as CEO continuously for more than 12 months; or
 - (d) the appointment had ceased to have effect; or
 - (e) the occasion to act had not arisen or had ceased.

Division 3.2—Staff and consultants

25 Staff

- (1) The staff of the authority are employed under the *Public Sector Management Act 1994*.
- (2) That Act applies in relation to the management of the staff of the authority.

26 Consultants

- (1) The authority may engage consultants.
- (2) Subsection (1) does not confer on the authority a power to enter into a contract of employment.

PART 4—MANAGEMENT

Division 4.1—Preliminary

27 Definitions

(1) In this Part, the following definitions apply unless the contrary intention appears:

business plan, in relation to a financial year, means the business plan of the authority as in force in respect of that year and includes any modification of that plan.

commissioner means the Commissioner for Australian Capital Territory Revenue.

equivalent law means a law of the Commonwealth that—

- (a) deals with taxation or imposes a tax; and
- (b) does not apply to the authority by reason only that the authority is an instrumentality of the Territory; and
- (c) is not the subject of a declaration under subsection (2).

tax includes a duty, fee or charge.

(2) The Treasurer may, by signed instrument, declare that a provision of a law of the Commonwealth is not to be an equivalent law in respect of the authority.

(3) A declaration under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Division 4.2—General

28 Management focus

The functions of the authority must be discharged—

- (a) in accordance with sound business practice; and
- (b) so as to achieve the business plan of the authority.

29 Development of business plans

(1) The object of this section is to provide for the development by the authority, in consultation with the Minister, of an annual business plan for the authority within, as far as practicable, the first 2 months of each financial year commencing on or after 1 July 2000.

- (2) The authority must, as far as practicable, submit to the Minister within 1 month after the commencement of each financial year a draft business plan for that financial year.
- (3) The draft must contain the material mentioned in subsections 30 (1) and (2) (as far as it is then available).
- (4) The Minister must, as soon as practicable after receipt of the draft, or a revised draft forwarded under paragraph (5) (c)—
- (a) provide comments in writing to the authority on the draft or revised draft; or
 - (b) notify the authority in writing that the Minister proposes to make no comments on the draft or revised draft.
- (5) As soon as practicable after receipt of any comments by the Minister the authority must—
- (a) consider the comments; and
 - (b) consult with the Minister on any of the comments with which the authority does not agree with a view, as far as practicable, of reaching agreement; and
 - (c) forward to the Minister a revised version of the draft business plan that, as far as practicable, gives effect to the Minister's comments and any matters agreed between the Minister and the authority.
- (6) A draft or revised draft becomes the business plan of the authority in respect of the relevant financial year when the authority receives a notification under paragraph (4) (b) in respect of the draft or revised draft.

30 Business plans

- (1) The business plan of the authority in respect of a financial year, must contain—
- (a) a copy of the latest available statement of intent provided in accordance with section 58 of the Financial Management Act in respect of that financial year; and
 - (b) a description of the main undertakings of the authority in respect of that financial year and each of the next 2 financial years; and
 - (c) a description of the business and corporate strategies of the authority in respect of that financial year and each of the next 2 financial years.

(2) The business plan of the authority must also contain any other information that the Minister, in writing, may have required the authority to include in it.

(3) The Minister must, within 6 sitting days after notifying the authority under paragraph 29 (4) (b) in respect of the draft or revised draft of the business plan, cause a copy of the plan to be laid before the Legislative Assembly.

(4) Before laying the business plan before the Legislative Assembly, the Minister may delete from it any material that is commercially sensitive, but in that case the Minister must, at the same time, lay before the Assembly a further statement setting out the general nature of the material deleted and the reason for the deletion.

31 Modification of business plans

(1) Subject to subsections 30 (1) and (2) and this section, the authority may modify the business plan of the authority in respect of a financial year.

(2) The authority may submit to the Minister a proposal to modify its business plan.

(3) The Minister must, as soon as practicable after receipt of the proposal, or a revised proposal forwarded under paragraph (4) (c)—

- (a) provide comments in writing to the authority on the proposal or revised proposal; or
- (b) notify the authority in writing that the Minister proposes to make no comments on the proposal or revised proposal.

(4) As soon as practicable after receipt of any comments by the Minister the authority must—

- (a) consider the comments; and
- (b) consult with the Minister on any of the comments with which the authority does not agree with a view, as far as practicable, of reaching agreement; and
- (c) forward to the Minister a revised version of the proposal that, as far as practicable, gives effect to the Minister's comments and any matters agreed between the Minister and the authority.

(5) When the authority receives a notification under paragraph (3) (b) in respect of the proposal, the business plan must be modified in accordance with the proposal.

(6) If a business plan is modified in accordance with a proposal or a revised proposal, the Minister must cause a copy of the proposal or revised proposal, as the case may be, to be laid before the Legislative Assembly within 6 sitting days after being notified of the modification.

(7) Before laying the modified business plan before the Legislative Assembly, the Minister may delete from it any material that is commercially sensitive, but in that case the Minister must, at the same time, lay before the Assembly a further statement setting out the general nature of the material deleted and the reason for the deletion.

Division 4.3—Financial provisions

32 Proceeds of grant of leases

(1) Subject to generally accepted accounting principles, any consideration received by the authority for the grant of a lease of land is taken to be, for the purposes of this Act, income of the authority.

(2) In subsection (1) the reference to the grant of a lease of land includes the grant, under authorisation of the Executive, of a lease (including a lease to the authority itself) of land that, immediately before the grant, was unleased.

33 Payment of funds to the Territory

(1) The Treasurer may, from time to time, by signed instrument, direct the authority to pay to the Territory—

- (a) a specified amount; or
- (b) an amount calculated in a specified manner;

in such manner, at such time or times and on such terms and conditions as the Treasurer specifies by that or another instrument.

(2) In giving a direction under subsection (1), the Treasurer must have regard to—

- (a) the assets and liabilities of the authority; and
- (b) its income and expenditure; and
- (c) the ability of the authority to discharge its functions; and
- (d) the requirement that the Territory obtain a reasonable return from the development and disposal of unleased land.

(3) For calculations under this section, land within the development area is taken to be an asset of the authority.

(4) Subject to subsection (5), the authority must, as soon as practicable after the end of each financial year, pay to the Territory an amount equal to the amount of funds that it holds that are not expected to be required for the discharge of its functions.

(5) The Treasurer may, by signed instrument, direct that the authority pay a lesser amount than the amount referred to in subsection (4).

(6) The authority must comply with a direction under this section.

34 Commonwealth tax equivalents

(1) Subject to this section, the authority must pay to the Territory an amount (a *Commonwealth tax equivalent*) equivalent to the tax that it would be liable to pay under an equivalent law if the authority were not an instrumentality of the Territory.

(2) The commissioner may, at any time, make an assessment of the Commonwealth tax equivalent payable by the authority.

(3) The commissioner may, at any time, amend an assessment as the commissioner thinks necessary, even if the Commonwealth tax equivalent has been paid in respect of the assessment.

(4) An amended assessment is an assessment for any law of the Territory (including this Act).

(5) The commissioner must, within 14 days after making an assessment, give a copy of the assessment to the authority.

(6) A document that appears to be a copy of an assessment may be tendered in evidence, without being proved, as evidence (in the absence of proof to the contrary), that—

- (a) the assessment was duly made; and
- (b) except in proceedings by way of review of the assessment or the process of making it—that the Commonwealth tax equivalent is payable by the authority.

(7) Subject to section 35, payment of a Commonwealth tax equivalent must be made on terms determined by the commissioner.

35 Variation of assessment or determination

(1) The authority, if dissatisfied with an assessment or determination of the commissioner, may request the commissioner to refer it to the Treasurer.

(2) The Treasurer may, in writing, vary an assessment or determination so referred.

(3) An assessment or determination varied by the Treasurer has effect as varied.

(4) For this section, the commissioner has all the powers, and may exercise any discretions, that by any law of the Commonwealth are vested in the authority or officer administering the equivalent law.

36 Information etc to be given to commissioner

(1) The authority must give to the commissioner all the information, returns or documents that, if it were not an instrumentality of the Territory, it would be obliged under a law of the Commonwealth to give to the authority or officer administering the equivalent law.

(2) The information, returns and documents must be given in the manner, and within the times, that would apply under the law of the Commonwealth.

37 Liability for ACT taxes

The authority is not exempt under this Act from liability under a law of the Territory for any tax.

38 Application of Part 8 of Financial Management Act

(1) Funds must not be invested, or moneys borrowed, for the purposes of the authority except in accordance with Part 8 of the Financial Management Act.

(2) Subsection (1) does not limit the application of Part 8 of the Financial Management Act in relation to the authority.

PART 5—MISCELLANEOUS

39 Provision of information

The authority must give to the Minister such information relating to its operations as the Minister requires.

40 Ministerial directions

(1) The Minister may give written directions, not inconsistent with this Act or the regulations, to the authority in relation to the performance of its functions, either generally or in relation to a particular matter.

(2) The authority must give effect to any such direction.

(3) The Minister must cause a copy of any such direction to be laid before the Legislative Assembly within 6 sitting days after it is given to the authority.

(4) The Territory must pay to the authority the reasonable costs of complying with a direction.

(5) The amount payable under subsection (4) is the amount agreed between the authority and the Treasurer or, failing agreement, the amount determined by the Chief Minister.

41 Annual report

The report presented, or information provided, by the authority under section 8 of the *Annual Reports (Government Agencies) Act 1995* must include, in relation to the reporting period to which the report or information relates—

- (a) a copy of any direction given under section 40 during the period; and
- (b) a statement by the authority about action taken during the period to give effect to any direction given (whether before or during the period) under that section.

42 Validation of acts where appointment irregular etc

Anything done by or in relation to a person who is, or purports to be, as a member or as the chairperson, deputy chairperson or CEO is not invalid because—

- (a) the occasion for the appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the appointment; or

- (c) the appointment had ceased to have effect.

43 Delegations and authorisations

- (1) The authority may, either generally or as provided by the instrument of delegation, by instrument under its common seal, delegate to the CEO any of its powers under this Act, other than a power under this section.
- (2) The authority may, by instrument under its common seal, authorise a person to act on its behalf in the exercise of a power under this Act or any other Act, other than a power under this section.

44 Review of Act

- (1) The Minister must cause a review of the operation and effectiveness of this Act to be carried out as soon as practicable after the expiry of the period of 5 years commencing on the day when this section commences and must ensure that, in the course of that review, regard is had to—
 - (a) the effectiveness of the operations of the authority; and
 - (b) the need for the continuation of the existence of the authority; and
 - (c) the need for the continuation of this Act; and
 - (d) any other matter that appears to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister must prepare a report based on the review made under subsection (1) and must, as soon as practicable, lay it before the Assembly.

45 Regulations

The Executive may make regulations for this Act.

46 Vesting of assets

- (1) Subject to this section, the Minister may, by signed instrument, divest an asset from the Territory and transfer the asset to the authority.
- (2) Before making an instrument in relation to an asset, the Minister must be satisfied that—
 - (a) the asset—
 - (i) has been used, or made available for use, for the authority's operations; or
 - (ii) otherwise relates to those operations; and
 - (b) it would be appropriate to transfer the asset to the authority; and
 - (c) the authority has, in writing, consented to the transfer.

(3) If the Territory is—

- (a) a party to a contract or an agreement; or
- (b) subject to an obligation;

that relates to an asset transferred under subsection (1), the Minister may make provision, in the instrument of transfer or another instrument signed by the Minister, for the authority to be substituted for the Territory as—

- (c) that party to the contract or an agreement; or
- (d) the body subject to the obligation;

as the case may require.

(4) An instrument under this section takes effect according to its terms.

(5) For this section, an estate or interest in land is taken not to be an asset.

47 Area specified by National Capital Plan

A provision of this Act conferring a function, power or duty on the authority takes effect, in relation to the area mentioned in paragraph 4 (1) (b), subject to any relevant provision or requirement of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

48 Transitional—first business plan

(1) This section lapses on 1 July 2000.

(2) Until then, the following subsections apply instead of subsection 29 (2):

“(2) The authority must submit to the Minister a draft business plan for the period that begins on the day of commencement of this section and ends at the end of 30 June 2000.

“(2A) The authority must comply with subsection (2) within 3 months after the day of commencement of this section or, if it is not practicable to comply within that period, as soon as practicable after the end of that period.”.

SCHEDULE

(See ss 11 (1) and 13)

APPOINTMENT AND TERMS AND CONDITIONS OF APPOINTED MEMBERS

1 Appointment and terms of office

- (1) The appointment of a person as an appointed member is to be by the Minister by signed instrument.
- (2) Before appointing a person, the Minister must—
 - (a) consider the suitability of the person for appointment having regard to the person's expertise and knowledge; and
 - (b) consult with the relevant committee of the Legislative Assembly; and
 - (c) consider any recommendation made by the committee, being a recommendation made within 30 days after the consultation.
- (3) In subsection (2)—

relevant committee means—

 - (a) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for the purposes of subsection (2); or
 - (b) where no nomination in paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.
- (4) An appointed member holds office, subject to this Act—
 - (a) for the period specified in the instrument of appointment; and
 - (b) on such terms and conditions (if any) in relation to matters not provided for by this Act as are specified in the instrument of appointment.
- (5) The period of the appointment must not be more than 3 years.
- (6) Subject to this Act, a former appointed member is eligible for reappointment.

2 Remuneration and allowances

An appointed member is entitled to remuneration, allowances and other entitlements in accordance with—

- (a) a determination of the Remuneration Tribunal; or

SCHEDULE—continued

- (b) if there is no such determination—an interim determination by the Chief Minister under the *Remuneration Tribunal Act 1995*.

3 Resignation

An appointed member may resign office by writing signed by the member and given to the Minister.

4 Termination of appointment

(1) The Minister may terminate the appointment of an appointed member because of the misbehaviour or physical or mental incapacity of the member.

(2) If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent for 3 consecutive meetings; or
- (c) without reasonable excuse contravenes section 20; or
- (d) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer;

the Minister must, subject to subclause (3), terminate the appointment of that member.

(3) For paragraph (2) (b), an absence on leave is to be disregarded.

(4) A termination must be by instrument signed by the Minister.

[Presentation speech made in Assembly on 25 November 1999]