

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Tucker)

**Territory Owned Corporations
(Amendment) Bill 1999**

A BILL

FOR

**An Act to amend the *Territory Owned Corporations
Act 1990***

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

1. Short title

5 This Act may be cited as the *Territory Owned Corporations
(Amendment) Act (No.) 1999*.

2. Commencement

(1) This Act, other than sections 4, 6 and 9, commences on the day on which this Act is notified in the *Gazette*.

10 (2) Sections 4, 6 and 9 commence on a day fixed by the Minister by notice in the *Gazette*, being a day not earlier than the day on which sections 4 and 5 of the *Territory Owned Corporations (Amendment) Act 1999* commence.

Job No.: 1998/095

(3) If sections 4, 6 and 9 have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those sections, by force of this subsection, commence on the first day after the end of that period.

5 **3. Principal Act**

In this Act, "Principal Act" means the *Territory Owned Corporations Act 1990*.¹

4. Interpretation

10 Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

 " 'defined director' means a director referred to in subsection 12 (2);

 'relevant body'—

- 15 (a) in relation to a director referred to in paragraph 12 (2) (a)—
 means the Trades and Labour Council of the Australian Capital Territory Incorporated;
- (b) in relation to a director referred to in paragraph 12 (2) (b)—
 means the Australian Capital Territory Council of Social Service Incorporated; and
- 20 (c) in relation to a director referred to in paragraph 12 (2) (c)—
 means the Conservation Council of the South-East Region and Canberra Incorporated."

5. Substitution

Section 7 of the Principal Act is repealed and the following section substituted:

25 **"7. Principal objectives of corporations**

 "(1) The principal objectives of a Territory owned corporation are to—

- (a) operate at least as efficiently as any comparable business;
- (b) maximise the sustainable return to the Territory on its investment in the corporation in accordance with the performance targets contained in the latest statement of corporate intent of the corporation;
- 30 (c) exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and
- (d) where its activities affect the environment—conduct its operations in compliance with the principles of ecologically sustainable development.
- 35

 "(2) For the purposes of paragraph (1) (d), ecologically sustainable development is to be taken to require the effective integration of economic

and environmental considerations in decisionmaking processes and to be achievable through implementation of the following principles:

- 5 (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;
- 10 (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.

“(3) The principal objectives of a Territory owned corporation are of equal importance.”.

15 **6. Substitution**

Section 12 of the Principal Act is repealed and the following sections are substituted:

“12. Directors

20 “(1) A person is not eligible to be a director of a Territory owned corporation or subsidiary unless, in the opinion of the voting shareholders, he or she has the expertise or skills necessary to assist the corporation to achieve its principal objectives.

“(2) The directors of a Territory owned corporation or a subsidiary shall include the following:

- 25 (a) a person who is—
 - (i) an employee, or former employee, with commitment to the protection and promotion of the interests of the employees; or
 - 30 (ii) a representative of a trade union which represents employees;of the corporation or subsidiary;
- (b) a person with—
 - (i) knowledge of, or experience or qualifications in, together with commitment to, consumer rights; or
 - 35 (ii) knowledge of, or experience or qualifications in the provision of services to disadvantaged persons, together with commitment to social welfare;
- (c) in relation to ACTEW Corporation Limited, Totalcare Industries Limited and their subsidiaries—a person with knowledge of, or

experience or qualifications in, together with commitment to, environment protection.

“(3) In this section—

‘trade union’ means—

- 5 (a) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or Territory; or
- 10 (b) an association of employees a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment.

“12A. Appointment of directors other than defined directors

“(1) Subject to subsection (2), the voting shareholders shall not—

- (a) appoint a director (other than a defined director) of a Territory owned corporation; or
- 15 (b) consent to the appointment of a director (other than a defined director) of a subsidiary;

unless, before so doing, they have—

- (c) consulted with the relevant committee; and
- 20 (d) considered any recommendation made by the committee, being a recommendation made within 30 days after the consultation.

“(2) Where, for any reason, the number of directors of a Territory owned corporation or a subsidiary falls below—

- 25 (a) if the memorandum or articles of association of the corporation or subsidiary provides or provide for the minimum number of directors—that number; or
- (b) in any other case—the minimum number of directors required under the Corporations Law;

the voting shareholders are not required to comply with subsection (1) in relation to an appointment that, when made, will raise the number of

30 directors to the number referred to in paragraph (a) or (b), as the case requires.

“(3) In this section—

‘relevant committee’ means—

- 35 (a) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for the purposes of this section; 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.

“12B. Selection of defined directors

5 “(1) Where there is a vacancy or an expected vacancy in the office of a defined director, the voting shareholders shall request the relevant body to nominate 3 candidates for that office.

““(2) Subject to subsection (3), the voting shareholders shall—

- (a) in the case of a Territory owned corporation—appoint; or
10 (b) in the case of a subsidiary—consent to the appointment of;
a defined director from the candidates nominated by the relevant body.

““(3) The voting shareholders are not required to comply with subsection (2) if—

- 15 (a) the relevant body does not provide the requested nominations within 28 days after the day of the request under subsection (1); or
(b) they decide that none of the candidates nominated by the relevant body is eligible to fill the vacancy or expected vacancy in the office of the defined director.

“12C. Where candidates not appointed

20 ““(1) This section applies where the voting shareholders have made a decision referred to in paragraph 12B (3) (b).

““(2) Where this section applies, the voting shareholders shall—

- (a) inform the relevant body in writing;
25 (b) cause a statement setting out the reasons for their decision to be laid before the Legislative Assembly within 6 sitting days after the making of the decision; and
(c) refrain from making or consenting to an appointment (as the case requires) to fill the vacancy or expected vacancy until permitted to do so by subsection (5) or (6).

30 ““(3) The Legislative Assembly may disapprove of the reasons set out in a statement laid under paragraph (2) (b) by resolution pursuant to a motion—

- (a) of which notice has been given within 6 sitting days after the laying of the statement; and
35 (b) that has been called on, moved and agreed to within 6 sitting days after the giving of the notice.

““(4) The Legislative Assembly is to be taken to have disapproved of the reasons set out in the statement if—

- (a) notice of a motion in accordance with paragraph (3) (a) has been given; and
- (b) the motion has not been withdrawn or disposed of within 6 sitting days after the giving of the notice.

5 “(5) If the Legislative Assembly has disapproved, or is to be taken to have disapproved, of the reasons set out in the statement—

- (a) each of the candidates nominated by the relevant body is, for the purposes of this Act, to be taken to be eligible to be a director; and
- 10 (b) the voting shareholders shall appoint or consent to the appointment of (as the case requires) a defined director from those candidates.

“ (6) If the Legislative Assembly has not disapproved, or is not to be taken to have disapproved, under this section of the reasons set out in the statement, the voting shareholders may appoint or consent to the appointment (as the case requires) of any person who is eligible under
15 subsection 12 (2) to the office of defined director to which the statement referred to in paragraph (2) (b) refers.

“12D. Removal of defined directors

If a defined director is removed from office by resolution of the Territory owned corporation or subsidiary of which he or she is a director
20 before the expiration of his or her period of office, then—

- (a) in the case of a Territory owned corporation—
 - (i) the voting shareholders shall ensure that the relevant body that had nominated the removed director is informed; and
 - 25 (ii) the Minister shall cause a statement setting out the reasons for the removal to be laid before the Legislative Assembly within 6 sitting days after the removal; or
- (b) in the case of a subsidiary—
 - 30 (i) the voting shareholders of the Territory owned corporation of which it is a subsidiary shall ensure that the relevant body that had nominated the removed director is informed; and
 - (ii) the Minister shall cause a statement setting out the reasons for the removal to be laid before the Legislative Assembly within 6 sitting days after the removal.”.

7. Statement of corporate intent

35 Section 20 of the Principal Act is amended by omitting from paragraph (1) (a) “commercial”.

8. Insertion

After section 33A of the Principal Act the following section is inserted:

“33AB. Employment practices

“(1) A Territory owned corporation shall exercise its employment power without patronage or favouritism.

“(2) In this section—

5 ‘employment power’ means the power to do the following:

- (a) appoint a person;
- (b) engage a person under a contract;
- (c) temporarily transfer a person for a period of not less than 3
10 months where, were that transfer permanent, the transfer
 would be a promotion;
- (d) promote a person;
- (e) dismiss a person.”.

9. Schedule 3

Schedule 3 to the Principal Act is amended—

- 15 (a) by omitting from paragraph 4A (a) of Part I “12 (3)” and
 substituting “12A (2)”; and
- (b) by omitting from paragraph 4A (b) of Part I “12 (2)” and
 substituting “12A (1)”.

10. Schedule 4

20 Schedule 4 to the Principal Act is amended by omitting clause 2.

NOTE

Principal Act

1. Reprinted as at 10 July 1998. See also Act No. 10, 1999.

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