

1999  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Treasurer)

## ACTION Corporation Bill 1999

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### CONTENTS

Section		Page
	<b>PART 1—PRELIMINARY</b>	
1	Name of Act .....	1
2	Commencement .....	1
3	Definitions .....	2
	<b>PART 2—ACTION CORPORATION</b>	
	<i>Division 2.1—Corporate status</i>	
4	Establishment .....	3
5	Functions .....	3
6	Powers .....	3
7	Restrictions on contracts and dealings with assets .....	3
	<i>Division 2.2—Board of management</i>	
8	Establishment .....	4
9	Function of the board .....	4
10	Constitution of board .....	4
11	Appointment of directors .....	5
12	Chairperson and deputy chairperson .....	5
13	Honesty and diligence .....	5
14	Resignation .....	5
15	Termination of appointment .....	5

**CONTENTS—continued**

Section		Page
16	Disclosure of interest.....	6
	<i>Division 2.3—Procedures</i>	
17	Meetings.....	6
18	Procedure at meetings.....	7
19	Quorum.....	7
	<b>PART 3—CHIEF EXECUTIVE AND STAFF</b>	
	<i>Division 3.1—The chief executive</i>	
20	Appointment.....	8
21	Functions.....	8
	<i>Division 3.2—Employees and consultants</i>	
22	Employees.....	8
23	Former public servants.....	8
24	Consultants.....	9
	<b>PART 4—ACCOUNTABILITY AND FINANCE</b>	
25	Requests for information.....	10
26	Notification of significant events.....	10
27	Ministerial directions.....	10
28	Business plans.....	11
29	Compliance with business plans.....	12
30	Dividends.....	12
31	Other reporting requirements.....	12
	<b>PART 5—MISCELLANEOUS</b>	
	<i>Division 5.1—Conduct of persons associated with the corporation</i>	
32	Meaning of <i>relevant person</i> for Div 1.....	13
33	Improper use of position.....	13
34	Improper use of information.....	13
	<i>Division 5.2—General</i>	
35	Power to bind corporation.....	13
36	Annual report.....	13
37	Taxation.....	14
	<b>PART 6—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES</b>	
38	Transfer of assets, rights and liabilities.....	15
39	Evidentiary certificate.....	15
40	Registration of changes in title to certain assets.....	15
41	Proceedings and evidence.....	16

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(As presented)

(Treasurer)

**ACTION Corporation Bill 1999**

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**A BILL**

FOR

**An Act to establish the ACTION Corporation  
and for related purposes**

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

**PART 1—PRELIMINARY**

**1 Name of Act**

5 This Act is the *ACTION Corporation Act 1999*.

**2 Commencement**

(1) Section 1 and this section commence on the day this Act is notified  
in the Gazette.

10 (2) The remaining provisions commence on a day fixed by the Minister  
by notice in the Gazette.

(3) However, if a remaining provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the next day.

### **3 Definitions**

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

*appointed director* means a person appointed to be a director of the corporation under section 11.

10 *board* means the board of management of the corporation established by section 8.

*chief executive* means a person appointed under section 20.

*commencement day* means the day when this section commences.

*corporation* means ACTION Corporation.

*director* means a director of the corporation.

## **PART 2—ACTION CORPORATION**

### ***Division 2.1—Corporate status***

#### **4 Establishment**

(1) ACTION Corporation is established by this subsection.

5 (2) The corporation—

- (a) is a body corporate; and
- (b) may have a seal.

#### **5 Functions**

The functions of the corporation are—

- 10 (a) to provide an effective public transport network within its area of operation; and
- (b) to operate on a sound commercial basis; and
- (c) to maximise the sustainable return to the Territory on its investment in the corporation; and
- 15 (d) to perform services to the community in accordance with any agreement with the Minister; and
- (e) to advise the Minister on all significant issues relating to the corporation and its activities; and
- (f) to implement any directions from the Minister under this Act; and
- 20 (g) such other functions as are conferred on the corporation under this Act or any other law of the Territory; and
- (h) to carry out activities incidental to the performance of another function.

#### **6 Powers**

25 (1) The corporation has power to do everything necessary or convenient to be done in connection with the performance of its functions.

(2) Without limiting subsection (1), the corporation has the same capacity as an individual.

#### **7 Restrictions on contracts and dealings with assets**

30 (1) The corporation or any company that, under the Corporations Law, is a subsidiary of the corporation, may not, without the Treasurer's prior written approval—

- (a) enter into a contract involving the payment or receipt of an amount that exceeds, or of amounts that in total exceed, 35 \$500,000; or

- (b) dispose of any of its main undertakings; or
- (c) sell or otherwise dispose of, mortgage or otherwise give security over, a significant asset; or
- (d) mortgage or give a charge over the whole or a significant part of its undertakings or assets.

(2) An approval of the Treasurer may be given subject to conditions and, if it is so given, the corporation or subsidiary must not carry out the activity or enter into the transaction to which the approval refers until the conditions are satisfied.

## ***Division 2.2—Board of management***

### **8 Establishment**

A board of management of the corporation is established by this section.

### **9 Function of the board**

(1) The board has general responsibility for the policies and management of the corporation.

(2) Without limiting subsection (1), the board is required to—

- (a) decide the strategies and policies to be followed by the corporation; and
- (b) ensure that the corporation performs its functions in a proper, effective and efficient way.

### **10 Constitution of board**

(1) Subject to subsection (3), the board consists of the directors.

(2) The directors of the corporation are—

- (a) the appointed directors; and
- (b) the chief executive.

(3) For the purpose of considering or dealing with any matter relating to—

- (a) the appointment or termination of appointment of a chief executive; or
- (b) the terms or conditions of appointment of a chief executive;

the board consists of the appointed members only.

(4) The performance of the functions, and the exercise of the powers, of the corporation are not affected merely because of there being a vacancy in its membership.

**11 Appointment of directors**

- (1) The Minister may, by instrument, appoint not less than 4 or more than 6 people to be directors of the corporation.
- (2) An appointment may not be for longer than 3 years.

**5 12 Chairperson and deputy chairperson**

- (1) The Minister must, by instrument, appoint an appointed director to be the chairperson of the board.
- (2) The directors must elect an appointed director to be the deputy chairperson of the board.

**10 13 Honesty and diligence**

In the discharge of his or her functions as a director, a director must exercise the degree of honesty, care and diligence that is required to be exercised by a director of a company in relation to the affairs of the company.

**15 14 Resignation**

An appointed director may resign by signed notice of resignation given to the Minister.

**15 Termination of appointment**

- 20 (1) The Minister must terminate the appointment of an appointed director if the director—**
- (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
  - 25 (b) is absent, except on leave, from 3 consecutive meetings of the corporation; or**
  - (c) has contravened section 13 or Part 5, Division 1; or
  - (d) without reasonable excuse, has contravened section 16; or
  - (e) is sentenced, in Australia or elsewhere, to imprisonment for at least 1 year; or
  - 30 (f) is convicted, in Australia or elsewhere, of an offence—**
    - (i) the maximum punishment for which is imprisonment for at least 1 year; or
    - (ii) that involves fraud or arises out of the promotion, formation or management of a corporation.
- 35 (2) The Minister may terminate the appointment of an appointed director if the board tells the Minister in writing that it has resolved, by a**

majority of at least 2/3rds of the directors, to recommend to the Minister that the appointment of the director be terminated.

(3) The board may only pass a resolution mentioned in subsection (2) if—

- 5 (a) at least 21 days written notice of the intention to consider the proposed resolution has been given to the director concerned; and
- (b) the director has been given an opportunity to make submissions and present documents to a meeting of the board; and
- 10 (c) if the member has availed himself or herself of the opportunity mentioned in paragraph (b)—a summary of his or her arguments is recorded in the minutes of the corporation and a copy of any documents presented is incorporated in the minutes.

#### **16 Disclosure of interest**

15 (1) A director who has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the board must, as soon as practicable after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.

20 (2) The disclosure must be recorded in the minutes of the meeting and, unless the board otherwise decides, the director must not—

- (a) be present during any deliberation of the board on that matter; or
- (b) take part in any decision of the board on that matter.

(3) A director who has made a disclosure under this section must not—

- 25 (a) be present during any deliberation of the board for the purpose of considering whether to make a decision under subsection (2); or
- (b) take part in the making of a decision.

### ***Division 2.3—Procedures***

#### **17 Meetings**

30 (1) The chairperson or, if he or she cannot do so, the deputy chairperson—

- (a) may convene a meeting of the board whenever he or she considers it necessary for the efficient discharge of the functions of the corporation or of the board; and
- 35 (b) must convene a meeting of the board as soon as practicable if the convening of a meeting is requested by the Minister or, in writing, by at least 2 members.



(2) A person who convenes a meeting of the board must give to the other directors reasonable notice of the time and place of the proposed meeting.

**18 Procedure at meetings**

5 (1) The chairperson must preside at all meetings of the board at which he or she is present.

(2) If the chairperson is not present at a meeting, the deputy chairperson must preside.

10 (3) If the chairperson and the deputy chairperson are both absent from a meeting, the directors present must elect a director to preside.

(4) Subject to any decision of the board, the procedures to be followed in connection with a meeting are as the presiding director decides.

15 (5) If all the directors so agree, a meeting may be held by means of a method of communication, or a combination of methods of communication, that enables all participants to hear what another participant says without being in each other's presence.

(6) A director who takes part in a meeting conducted under subsection (5) is taken, for all purposes, to be present at the meeting.

20 (7) Questions arising at a meeting may be decided by a majority of the votes of the directors present and voting.

(8) The presiding director has a deciding vote and, if the votes are equal, a casting vote.

(9) The board must keep minutes of its proceedings in writing or in such other form as the board decides.

25 **19 Quorum**

A majority of the appointed directors is a quorum for a meeting.

### **PART 3—CHIEF EXECUTIVE AND STAFF**

#### ***Division 3.1—The chief executive***

##### **20 Appointment**

- (1) The corporation must appoint a chief executive.
- 5 (2) The corporation may appoint a person to act as chief executive—
- (a) while the office of chief executive is vacant; or
  - (b) while the chief executive is absent from the ACT or, for any other reason, unable to perform his or her functions.
- (3) The terms and conditions of appointment of the chief executive are
- 10 as agreed to between the corporation and the chief executive.
- (4) The corporation may only enter into an agreement mentioned in subsection (3) after consultation between the Minister and the board.
- (5) Despite any agreement under subsection (3), the corporation may
- 15 terminate the appointment of a chief executive without compensation for failure to comply with subsection 21 (2) or Part 5, Division 1.

##### **21 Functions**

- (1) The functions of the chief executive are—
- (a) to manage the corporation's affairs on a day-to-day basis on behalf of the board; and
  - 20 (b) to be a director; and
  - (c) such other functions as are given to him or her by the board.
- (2) In performing the function under paragraph (1) (a), the chief executive must act in accordance with any policies decided, and any directions given, by the board.

#### ***Division 3.2—Employees and consultants***

##### **22 Employees**

- (1) The corporation may employ as members of its staff such persons as it considers necessary to enable it to properly discharge its functions.
- (2) The terms and conditions of employment of persons employed by
- 30 the corporation are as decided in writing by the corporation.

##### **23 Former public servants**

- (1) The corporation may, in writing, declare that a person who—

- (a) immediately before the commencement day had been a public servant employed or performing duties in the business unit known as ACTION in the Department of Urban Services; and
- (b) immediately after the commencement day is an employee of the corporation;

is a transferred employee.

(2) Until the rights of a transferred employee are changed—

- (a) a transferred employee is employed by the corporation on the terms and conditions that applied to him or her under the *Public Sector Management Act 1994* as in force immediately before the commencement day and the management standards under that Act in effect immediately before that day; and
- (b) the rights and entitlements that would have accrued to a transferred employee if he or she had remained a public servant continue to accrue to him or her.

(3) Without limiting subsection (2), if a transferred employee had, immediately before the commencement day, accrued as a public servant a period of recreation leave, long service leave or leave of absence on account of illness, he or she becomes eligible, on becoming an employee of the corporation, for the grant of an equal period of recreation leave, long service leave or leave of absence on account of illness.

(4) Despite subsection (2), the modifications to the *Occupational Health and Safety Act 1989* specified in Schedule 3 to the *Public Sector Management Act 1994* do not apply to a transferred employee.

## **24 Consultants**

The corporation may engage consultants.

## **PART 4—ACCOUNTABILITY AND FINANCE**

### **25 Requests for information**

The corporation must, on request, provide the Minister with all the information that he or she may require.

### **5 26 Notification of significant events**

The corporation must, as soon as practicable, tell the Minister of any significant event that affects, or seems likely to affect—

- (a) the value of the corporation; or
- (b) a significant part of its assets; or
- 10 (c) the performance of the corporation as a whole; or
- (d) the discharge of a significant activity of the corporation.

### **27 Ministerial directions**

(1) The Minister may, by instrument, give directions to the corporation in relation to the performance of any of its functions.

#### **15 (2) Before giving a direction the Minister must—**

- (a) tell the corporation of the effect of the proposed direction; and
- (b) give the corporation a reasonable opportunity to comment on the proposed direction; and
- (c) consider any comments made by the corporation.

20 (3) The Minister must lay before the Legislative Assembly an instrument under subsection (1) within 6 sitting days after making it.

(4) On receiving a direction under this section, the corporation must comply with it.

25 (5) The Territory is liable to reimburse the corporation for the net reasonable expense of complying with a direction.

#### **(6) The net reasonable expense of complying with a direction is—**

- 30 (a) if the direction requires the corporation to do something that, but for the direction, it would not have done—the reasonable cost of, and the estimated revenue foregone in, complying with the direction; or
- (b) if the direction requires the corporation to perform an activity in a way that is different from the manner in which the corporation had intended to perform it—the additional cost incurred, and the estimated revenue foregone, in performing the activity in  
35 accordance with the direction; or

- (c) if the direction requires the corporation to refrain from performing an activity—the difference (if any) between any estimated foregone revenue and the savings resulting from the nonperformance of the activity.

5 (7) An amount is not payable under subsection (5) unless it is agreed to by the Minister and the corporation or, failing agreement, is determined by the Treasurer.

## **28 Business plans**

10 (1) The Minister may request the corporation in writing to prepare and give to him or her a business plan made up to a date specified in the direction (the *specified date*).

(2) If the Minister makes a request under subsection (1), the corporation must give to the Minister a business plan that includes—

- 15 (a) a profit and loss account for the period from the beginning of the financial year to the specified date; and
  - (b) a cash flow statement for that period; and
  - (c) a statement of assets and liabilities at the specified date; and
  - (d) estimated profit and loss accounts and cash flow statements for each of the next 3 financial years; and
  - 20 (e) a statement of estimated assets and liabilities at the end of each of the next 3 financial years; and
  - (f) a copy of the statement of intent for the current financial year provided under subsection 58 (1) of the *Financial Management Act 1996*; and
  - 25 (g) a description of the business and corporate strategies adopted by the corporation; and
  - (h) a description of any significant action that the corporation has taken or intends to take in order to achieve the estimates set out in the statements under paragraphs (d) and (e); and
  - 30 (i) an explanation of any significant variation disclosed by the business plan from—
    - (i) estimates previously given by the corporation for the current or a future financial year; or
    - 35 (ii) strategies or policies, whether adopted or contemplated, of which advice had been given;
- in a previous business plan, information given to the Minister or the Treasurer, a statement of intent or an annual report.

40 (3) The Minister must cause a copy of each business plan given to him or her under subsection (2) to be presented to the Legislative Assembly within 6 days after receiving it.

**29 Compliance with business plans**

(1) This section applies to a financial year if the corporation has previously given to the Minister a business plan that contains estimates for the financial year.

5 (2) As soon as practicable after 31 December and 30 June in a financial year to which this section applies, the corporation must give to the Minister a written assessment of its performance, for the 6 month period ending on those dates, in relation to the estimates for that period contained in the latest business plan given to the Minister.

10 (3) A report under subsection (2) must be prepared in a form that facilitates a comparison between the business plan estimates applicable to the period and the outcomes of operations of the corporation during the period.

**30 Dividends**

15 (1) If there are profits available for doing so, the Treasurer, after consultation with the board, may direct the corporation to declare a dividend for a financial year of the amount directed by the Treasurer.

20 (2) The corporation must pay to the Territory, within 1 month after receiving a direction under subsection (1), a dividend in accordance with the direction.

(3) For this section, available profits are—

(a) the profits for the financial year to which the Treasurer's direction relates; and

25 (b) any profits for any previous financial year that have not previously been taken into account in deciding whether a dividend should be declared.

(4) In this section—

*profit* includes the net proceeds of the sale of assets.

**31 Other reporting requirements**

30 (1) In addition to any other reports that the corporation is required by this Act or any other law to make, the corporation must give to the Treasurer such reports as the Treasurer from time to time requests in writing.

35 (2) A report under this section must be prepared in such form and be based on such accounting or other policies or practices as the Treasurer specifies in writing.

## **PART 5—MISCELLANEOUS**

### ***Division 5.1—Conduct of persons associated with the corporation***

#### **32 Meaning of relevant person for Div 1**

In this Division—

5 **relevant person** means—

- (a) a director; or
- (b) an employee of the corporation; or
- (c) a person performing services for the corporation.

#### **33 Improper use of position**

10 A relevant person must not knowingly make improper use of his or her position as a relevant person to gain, directly or indirectly, an advantage for himself or herself or anyone else or to cause detriment to the corporation.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

#### **15 34 Improper use of information**

A relevant person or former relevant person must not knowingly make improper use of information acquired because of his or her position as a relevant person to gain, directly or indirectly, an advantage for himself or herself or anyone else or to cause detriment to the corporation.

20 Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

### ***Division 5.2—General***

#### **35 Power to bind corporation**

Anything done by, or on behalf of, the corporation by the board or the chief executive is taken to have been done by the corporation.

#### **25 36 Annual report**

A report or information prepared by the corporation for section 8 of the *Annual Reports (Government Agencies) Act 1995* must include, for the reporting period—

- 30 (a) a copy of any direction given by the Minister under section 27 during the period; and
- (b) a statement by the corporation about action taken during the period to give effect to any direction given by the Minister under that section, whether during that period or an earlier one.

**37 Taxation**

Part 5 of the *Territory Owned Corporations Act 1990* applies to the corporation as if the corporation were a Territory owned corporation within the meaning of that Act.



## PART 6—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

### 38 Transfer of assets, rights and liabilities

(1) The Minister may, in writing, declare that assets, rights or liabilities of the Territory specified or described in the instrument that existed immediately before the commencement day vest in the corporation.

(2) An instrument under subsection (1)—

(a) may be made before or after the commencement day; but

(b) takes effect, or is to be taken to take effect, on the commencement day.

(3) An asset, right or liability specified or described in an instrument under subsection (1) vests, by force of this section, in the corporation on the commencement day.

(4) If an asset, right or liability that is transferred to the corporation under this section is mentioned in a contract, agreement or arrangement, the reference to the Territory in the contract, agreement or arrangement is to be read (except in relation to matters that occurred before the commencement day) as a reference to the corporation.

### 39 Evidentiary certificate

(1) The chief executive may certify in writing that an asset, right or liability mentioned in the certificate has vested in the corporation under section 38.

(2) A certificate under subsection (1) is evidence of the matters it states.

(3) A document that purports to be a certificate signed by the chief executive under subsection (1) is taken, unless the contrary is proved, to be such a certificate and to have been so signed.

(4) In this section—

*chief executive* means the chief executive of the administrative unit responsible under paragraph 14 (b) of the *Public Sector Management Act 1994*, for this Act.

### 40 Registration of changes in title to certain assets

(1) If a registrable asset vests in the corporation under section 38, the corporation may give to the relevant registering authority a certificate under section 39 for that asset.

(2) On receipt of a certificate under section 39 that relates to a registrable asset, a registering authority must make such entries in the

relevant registers kept by it, and do such other things, as are necessary to reflect the operation of section 38.

(3) In this section—

5        **registering authority** means a person who, under a law of the Territory, is required to enter in a register particulars relating to the ownership of a registrable asset.

**registrable asset** means an asset, including an interest in land, particulars of the ownership of which are required under a law of the Territory to be entered in a register.

10    (4) The evidentiary value of a register mentioned in this section is not affected by—

- (a) the making of an entry under this section; or  
      (b) the failure to make an entry under this section; or  
15        (c) the failure by the corporation to give a certificate to a registering authority.

#### **41 Proceedings and evidence**

(1) In this section—

20        **proceeding** includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding relating to an asset, right or liability vested in the corporation under section 38.

(2) For a proceeding started before the commencement day to which the Territory is a party, the corporation is substituted as a party to the proceeding.

25    (3) A proceeding that—

- (a) was not started before the commencement day; and  
      (b) apart from this section could, after that day, be brought against the Territory;

may be brought against the corporation.

30    (4) Part 3 of the *Limitation Act 1985* applies to the institution of proceedings mentioned in subsection (1) by or against the corporation as if the cause of action had accrued by or against the corporation.

35    (5) The court, tribunal, commission or other body in which, or before which, proceedings have been instituted or continued under this section may give directions in relation to the institution or continuance of those proceedings.

(6) Any evidence that, but for this section, would have been admissible for or against the Territory is admissible for or against the corporation.

(7) The Territory and the corporation must endeavour to assist each other in the provision of evidence relevant to a proceeding for a cause of action arising before the commencement day.

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**Endnote**

**Penalty units**

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.