

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**KINGSTON FORESHORE DEVELOPMENT AUTHORITY BILL  
1999**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
Gary Humphries MLA  
Treasurer**



## **Outline**

The objective of this Bill is to establish the Kingston Foreshore Development Authority.

The establishment of the Kingston Foreshore Development Authority was foreshadowed in the 1999-2000 Territory Budget. The Kingston Foreshore is to be redeveloped as a mixed use water front precinct with a strong arts, cultural, tourism and leisure theme. Development is to be undertaken on the basis of best practice environmentally sustainable development principles.

The development proposal is the outcome of an extensive community participation process and a national competition of ideas. The Government considers that the key to successfully implementing this innovative concept is the establishment of the Kingston Foreshore Development Authority.

The Kingston Foreshore Development Authority Bill sets out the functions, powers, membership and staffing of the Authority. The Authority is required to perform its functions in consultation with the community and in a manner which demonstrates social and environmental responsibility.

The Authority will be authorised by the Executive to grant leases on its behalf in the declared Kingston Foreshore Development Area. As a matter of policy any such authorisation will be limited to Part V of the Land (Planning and Environment) Act 1991 thereby ensuring that the Authority is subject to compliance with the Territory Plan.

Other significant provisions deal with the financial, accountability and reporting arrangements for the Authority. The Authority is subject to the *Financial Management Act 1996 (Part VIII)* which sets out financial provisions dealing with Territory Authorities. The Bill requires the Authority to prepare annual business plans.

### **Revenue Cost Implications**

The Bill will not impact on the 1999-2000 Budget.

## **DETAILS OF THE BILL**

### **PART 1 PRELIMINARY**

#### **Name of Act, Commencement, Definitions, Development Area.**

These are formal requirements. They refer to the short title of the bill and commencement. Commencement occurs on the day the Act is notified in the Gazette. The "Authority" is defined as the Kingston Foreshore Development Authority.

The extent of the Kingston Foreshore Development Area is defined and provision made for the area to be varied by the Minister by signed instrument notified in the Gazette.

### **PART 2 CORPORATE STATUS**

#### **Division 1 Establishment, functions, powers and limitations**

##### **Establishment**

Establishes the Kingston Foreshore Development Authority as a body corporate and provides for it to have a common seal.

##### **Functions**

The primary function of the Authority is to promote, coordinate, develop and manage the area on behalf of the Territory. This includes the carrying out of works for the development and enhancement of the area.

The Authority is obliged to carry out its functions in a manner which is consistent with social and economic needs, in consultation with the residents of the Territory and Kingston in particular and in compliance with the principles of ecologically sustainable development.

##### **Powers**

While the Authority is empowered to undertake activities to carry out its functions, the scope of these is indicated in Subclause 7(2). An important power is that the Authority will be authorised by the Executive to grant leases of land on its behalf. This authorisation will be pursuant to Part V of the *Land (Planning and Environment) Act 1991* and apply only to the Kingston Foreshore Development Area. Thus the Authority will be subject to the provisions of the Territory Plan. Subclause (2) allows the Authority to grant leases to itself. The application of such a provision may arise in a situation similar to the arrangements for the granting of "Executive Leases" where the Territory issues leases to the Australian Capital Territory for Government owned properties.

The range of powers listed will enable the Authority to undertake development in its own right, form companies, enter into contracts or joint ventures.

#### **Limitations on formation of companies**

The power of the Authority to form companies is limited. Such proposals require Ministerial approval and tabling of the details of the company in the Legislative Assembly. The Minister has some discretion in tabling information that would adversely affect the commercial interest of the Authority, though the Minister must table, at the same time, a statement setting out the general nature of the material deleted and the reasons for deletion.

#### **Controlling interests**

Where the Authority has a controlling interest in a company the Auditor-General is to be appointed auditor for the company and that the company may not do anything that the Authority itself is not empowered to do. Such companies may not raise moneys other than by borrowings from the Territory or Commonwealth other than with the written approval of the Minister administering the *Financial Management Act 1996*.

#### **Limitations on participation in joint ventures**

The Authority may not participate in joint ventures without the written approval of the Minister and the tabling of details of the joint venture in the Legislative Assembly. The Minister has some discretion in tabling information that would adversely affect the commercial interest of the Authority, though the Minister must table, at the same time, a statement setting out the general nature of the material deleted and the reasons for deletion.

### **Division 2 Membership**

#### **Constitution**

The Authority is to consist of 8 members including the Chief Executive Officer, a public servant member and 6 members appointed by the Minister.

#### **Chairperson and Deputy Chairperson**

This clause provides for the appointment by the Minister of a Chairperson. The members must from time to time elect a member (other than the Chairperson) as Deputy Chairperson.

#### **Appointed members**

This clause provides that the terms and conditions of members of the Authority are those set out in the Schedule.

### **Public servant member**

This clause provides for the appointment of a public servant member of the Authority by the Minister.

### **Leave of Absence**

This clause provides for the Minister to grant leave of absence to an appointed member of public servant member of the Authority.

### **Acting appointment or nominations**

During a vacancy in the office of a member or public servant member, the Minister may appoint a suitably qualified person to act as a member or public servant member for a period not exceeding twelve months.

## **Division 3 Meetings**

### **Convening Meetings**

This clause makes provision for procedure at meetings of the Authority. The Authority may hold meetings by telephone or video link. A resolution in writing, if it is signed by every member, takes effect as a resolution passed at a meeting.

### **Procedure**

This clause describes the procedure for the conduct of meetings of the Authority. Minutes of the proceedings are to be kept by the Authority.

### **Quorum**

Four members constitute a quorum at a meeting of the Authority.

### **Disclosure of interest**

This clause requires the disclosure of direct or indirect pecuniary interests of appointed members of the Authority.

## **PART 3 CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS**

### **Office of CEO**

This clause provides for the appointment of a Chief Executive Officer by the authority after consultation with the Minister. The CEO is required to disclose all direct or indirect pecuniary interests.

### **Leave of absence**

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

### **CEO's main function**

This clause provides that, subject to an in accordance with the general directions of the Authority, the Chief executive officer shall manage the affairs of the Authority.

### **Acting CEO**

During a vacancy in the office of the CEO or a period of absence from duty, the Minister may appoint a suitably qualified and experienced person to act as CEO for a period of up to twelve months.

## **Division 2 Staff and consultants**

### **Staff**

Staff of the Authority are employed under the *Public Sector Management Act 1994* and that act applies in relation to the management of the staff.

### **Consultants**

The Authority may engage consultants.

## **PART 4 MANAGEMENT**

### **Division 1 Preliminary**

#### **Definitions**

This is a formal provision.

### **Division 2 General**

#### **Management focus**

The Authority is required to discharge its functions in accordance with sound business practice and the Authority's business plan.

#### **Development of Business Plans**

The Authority, in consultation with the Minister, must prepare an annual business plan with two months of the commencement of each financial year. In preparing the business plan the Authority shall have regard to the Minister's views.

## **Business plans**

The business plan must contain financial information in the Authority's statement of intent (prepared in accordance with section 58 of the *Financial Management Act 1996*) together with longer term strategic information.

## **Modification of business plans**

The Authority may submit to the Minister a proposal to modify a business plan. In modifying a business plan the Authority shall have regard to the views of the Minister.

A business plan modified or revised in accordance with comments by the Minister must be laid before the legislative assembly with the next quarterly report. The Minister has some discretion in tabling information that would adversely affect the commercial interest of the Authority, though the Minister must table, at the same time, a statement setting out the general nature of the material deleted and the reasons for deletion.

## **Division 3 Financial provisions**

### **Proceeds of grant of leases**

This clause establishes that payments received by the Authority for the grant of a lease of land are to be treated as income of the Authority. This includes land granted to the Authority by the Executive.

### **Payment of funds to the Territory**

This clause sets out the broad conditions that will apply to payments made by the Authority to the Territory. The amount of these payments will be determined by the Treasurer and in making this determination, the Treasurer will consider the assets and liabilities of the Authority, its income and expenditure, its ability to carry out its functions and the requirement that the Territory receive a reasonable return on the land and other capital it has invested in the Authority. The Authority is also required to pay to the Territory any surplus funds that are not required for its operations.

### **Commonwealth tax equivalents**

The Authority will be subject to the equivalent taxes, fees and charges that a private developer would be subject to, to ensure that the rate of return to the Government is not over-stated. Such an approach is consistent with the Competition Principles Agreement to which all states, territories and the Commonwealth are signatories.



### **Variation of assessment or determination**

The Authority if dissatisfied with a tax assessment or determination, may request the Commissioner to refer the matter to the Treasurer. The Treasurer may vary the determination or assessment.

### **Information to be given to the Commissioner**

The Authority is obliged to provide to the Commissioner all information, and within such time periods as if the Authority were a private developer.

### **Liability for ACT taxes.**

The Authority is not exempt from any Territory taxes.

### **Application of Part 8 of Financial Management Act**

Part 8 of the *Financial Management 1996* applies to the Authority.

## **PART 5 MISCELLANEOUS**

### **Provision of information**

This clause provides that the Authority shall furnish to the Minister such information relating to its operations as the Minister requires.

### **Ministerial directions**

The Minister may give general or particular directions to the Authority. The Territory shall pay the reasonable cost to the Authority of complying with the direction. Details of the directions must be presented to the Legislative Assembly.

### **Annual reports**

This clause makes provision for an annual report. The Authority is a 'public authority' for the purposes of the *Annual Report (Government Agencies) Act 1995*.

### **Validation of acts where appointment irregular etc**

Provides that no act undertaken by a Member of the Authority or the CEO is invalidated by reason of a defect or irregularity in connection with the appointment of that person.

### **Delegations and authorisations**

This clause provides for the delegations of the Authority's powers to the Chief Executive Officer. There is also provision for the Authority to authorise others to exercise powers on its behalf.

### **Review of Act**

This clause provides for the Minister to undertake a review of the operation and effectiveness of the Act after a period of five (5) years. The Government's intention is to determine how effective the Authority has been and whether there is a need for the Authority to continue. A report of this review will be tabled in the Legislative Assembly.

### **Regulations**

Standard provision is made for the making of regulations.

### **Vesting of assets**

This clause makes provision for the transfer of assets to the Authority where the Minister is satisfied that such assets has or will be used for the Authority's operations.

### **Area specified by the National Capital Plan.**

Within the Kingston Foreshore Development Area there is a seven (7) metre wide strip of land along the immediate edge of Lake Burley Griffin, within which sits the retaining wall to the lake. This strip of land is subject to the National Capital Plan. This provision recognises that in undertaking any works within this strip of land, the Kingston Foreshore Development Authority will require works approval from the National Capital Authority.

### **Transitional first business plan**

This clause makes transitional provision for the development of the first business plan.

## **SCHEDULE**

The schedule provides for the appointment and terms and conditions of members referred to in Clause (1). Members may be appointed for up to three (3) years after the Minister has considered the appointee's suitability. Provision is also made for:

- entitlement for remuneration of appointed members of the Authority;
- resignation of appointed members of the Authority;
- the termination of appointment of appointed Members of the Authority;  
and
- acting appointments while the office is vacant or an appointed member is unavailable.