

ACTION CORPORATION BILL 1999

EXPLANATORY MEMORANDUM

Circulated by authority of
Gary Humphries MLA
Treasurer
November 1999

EXPLANATORY MEMORANDUM

ACTION Corporation Bill 1999

Outline

The Act establishes ACTION Corporation as a Statutory Authority to provide public passenger transport services.

ACTION Corporation is granted the necessary authority to achieve a number of commercial and customer service functions as provided for in the Act. A financial restriction is placed upon the magnitude of non-operational transactions ACTION Corporation may conduct to ensure that non-routine decisions that may have a significant impact on the value of the corporation require consent from the Treasurer.

The Act establishes a board to undertake the general management of the corporation. The board in turn appoints the chief executive to manage the corporation on its behalf. The Act provides for a range of procedural and management issues relating to the functioning of the board and chief executive.

The provision of information and reports relating to the corporation are prescribed in the Act.

Staff are transferred on the existing conditions of employment with a provision that permits future negotiation of new conditions between the corporation and employees once ACTION Corporation is established.

Assets and liabilities are transferred by instrument by the Minister. Provision is made to authorise registering authorities to recognise the new corporation.

There are no significant cost or revenue implications.

Objectives

The Government has an interest in the successful operation and management of ACTION. This interest stems from the Government's role as owner and financier of ACTION Corporation and beneficiary of financial returns and also in ensuring an effective public transport service for the nation's capital. The Government has a further objective to improve the accountability of ACTION Corporation.

The legislation seeks to provide ACTION as a separate body with an increased level of accountability and improved focus on its commercial activities.

The provisions will facilitate the ongoing viability of ACTION as a commercial concern, protect the value of the Government's investment in ACTION and support the Territory's strategy for the provision of an effective and efficient public transport service for the ACT community.

THE BILL

PART 1 - PRELIMINARY

Name of Act

Clause 1 States the name of the Bill. The title will assist quick location of the Act having regard to the matters it deals with.

Commencement

Clause 2 Sets the dates of commencement of the provisions

Definitions

Clause 3 Provides definitions for terms with specific meanings used in this Act.

PART 2 - ACTION CORPORATION

Division 1 - Corporate Status

Establishment

Clause 4 Establishes the statutory authority known as ACTION Corporation.

Functions

Clause 5 Sets out the functions of ACTION Corporation. This is to guide the strategic direction of the corporation.

Sub-clause (a) Provides for the corporation to operate as a public transport service provider wherever authorised to do so.

Sub-clause (b) Provides for the corporation to make decisions based on commercial principles.

Sub-clause (c) Provides for the corporation to consider its value to the Territory when performing its functions.

Sub-clause (d) Provides for the corporation to fulfil its community service obligations as agreed with the Minister.

Sub-clause (e) Provides for the corporation to ensure the Minister is informed of any and all information that is relevant to the operation or value of the corporation so that he or she may make informed decisions.

Sub-clause (f) Provides for the corporation to comply with lawful directions consistent with the intent of this Act, provided by the Minister in recognition of the Minister being ultimately responsible for the actions of the corporation.

Sub-clause (g) Provides for the corporation to operate in compliance with all appropriate legislation.

Sub-clause (h) Ensures the corporation is not restricted in its functions and provides for the corporation to undertake a wide range of actions that may assist in the fulfilment of any other function provided for by this clause.

Powers

Clause 6 Ensures that the corporation is not unnecessarily restricted in the actions it may undertake that are required to fulfil any function as described in Section 5.

Restrictions on contracts and dealings with assets

Clause 7 This is to ensure the Government's investment in the corporation is protected by restricting the freedom of the corporation with regard to decisions that may have significant value implications.

Routine operational issues are left to the discretion of the board with regard to any directions issued by the Minister. Exceptional transactions of a significant nature require the consent of the Treasurer.

Division 2 - Board of Management

Clause 8 **Establishment**

Creates a managing board for the corporation.

Clause 9 **Functions of the board**

The board is responsible to the Minister and is required to manage the corporation to the best of its ability in the pursuit of the functions in Section 5.

Clause 10 **Constitution of the board**

Provides for the board to consist of the directors appointed by the Minister and the Chief Executive engaged by the appointed directors.

Clause 11 **Appointment of directors**

Provides for board membership to total between four and six directors, excluding the Chief Executive, so as to ensure the corporation is represented by a range of individuals without becoming unwieldy in size. Terms of appointment are restricted to three years to discourage unreasonably lengthy terms for directors and allow for a change in board composition when required.

- Clause 12** **Chairperson and deputy chairperson**
Provides for the Minister to select the Chairperson from the appointed directors. This enables the Minister to confer additional rights and responsibilities upon the chosen director to act as a leader of the board. In the absence of the Chairperson, an appointed director, elected by his or her peers to be the Deputy Chairperson, will perform the duties of the Chairperson.
- Clause 13** **Honesty and diligence**
Provides for directors to practice a degree of competency and integrity in their role as a director, that would be expected of directors in other well respected companies.
- Clause 14** **Resignation**
Provides the requirements to be met for an appointed director to resign from his or her position.
- Clause 15** **Termination of appointment**
Provides for the Minister to terminate the appointment of appointed directors in certain circumstances to maintain the integrity and professionalism of the board.
- Sub-clause (1)** Defines the situations where the Minister must terminate the appointment of an appointed director when a director devalues the integrity, or betrays the trust, associated with their position.
- Paragraph (a)** Requires the Minister to terminate the employment of an appointed director in the event a director applies for any benefits associated with bankruptcy to ensure the integrity and impartiality of the director in the performance of his or her functions.
- Paragraph (b)** Requires the Minister to terminate the employment of an appointed director when he or she is perceived to be devoting insufficient commitment to his or her role as a director through non-attendance of meetings without being granted leave.
- Paragraph (c)** Requires the Minister to terminate the employment of an appointed director when the plans or actions of the director may bring themselves and/or the corporation into disrepute through negligence or dishonest intent.
- Paragraph (d)** Requires the Minister to terminate the employment of an appointed director when a potential conflict of interest occurs, or is reasonably perceived, and the director has not disclosed his or her interest to the board.

- Paragraph (e) Requires the Minister to terminate the employment of an appointed director when the director is likely to devalue the integrity of the board and corporation and unable to fulfil their obligations as a director as a consequence of imprisonment.
- Paragraph (f) Requires the Minister to terminate the employment of an appointed director when the director is likely to devalue the integrity of the board and corporation by virtue of a conviction of certain offences.
- Sub-clause (2) Defines when the Minister may terminate the appointment of an appointed director on the motion of other directors.
- Sub-clause (3) Provides for procedural fairness when the directors move a motion to terminate the appointment of an appointed director.
- Clause 16 **Disclosure of interest**
Ensures that the integrity of the corporation and the board is maintained and that actual or perceived conflicts of interest do not interfere with the competent management of the corporation. The board, having been notified of a potential conflict of interest, may determine there is insufficient risk relating to the matters immediately under consideration to warrant excluding the notifying director from related deliberations.

Division 3 - Procedures

- Clause 17 **Meetings**
Provides for the calling of meetings of the board as is necessary for the diligent management of the corporation.
- Clause 18 **Procedure at meetings**
Provides for an appointed director to preside over a meeting and to have the authority to break a deadlocked decision to ensure constructive outcomes are achieved. Minutes must be taken to ensure a record is kept for later reference.
- Clause 19 **Quorum**
Provides that the majority of appointed directors may hold a valid meeting. The minimum possible number of directors required to be present to constitute a quorum, in the event only four directors are appointed, is three.

PART 3 - CHIEF EXECUTIVE AND STAFF

Division 1 - The chief executive

Clause 20

Appointment

Provides for the appointed directors to select and appoint a chief executive for the corporation after consultation with the Minister. The appointed directors are further empowered to determine the conditions attached to the chief executive's employment with regard to existing employment law and in accordance with the desire of the Minister. The appointed directors have the discretion to remove the chief executive without compensation for failure to comply with policies or directions from the board or where the chief executive abuses his or her position or information acquired by him or her as a result of his or her position.

Clause 21

Functions

Provides for the chief executive to manage the corporation with and on behalf of the board. Provides for the chief executive to act as a link between the board and the corporation by being a member of the board.

Division 2 - Employees and consultants

Clause 22

Employees

Provides for the corporation to employ staff as required under terms and conditions negotiated under general employment law.

Clause 23

Former public servants

Provides that employees of the ACTION business unit within the Department of Urban Services will be transferred to the ACTION Corporation under their existing conditions until such time as a new agreement is reached between the employees and the corporation.

Clause 24

Consultants

Provides for the corporation to employ consultants as required.

PART 4 - ACCOUNTABILITY AND FINANCE

- Clause 25 Requests for information**
- Provides an obligation for the corporation to supply the Minister with any information required to effectively fulfil his or her role with regard to the corporation when requested.
- Clause 26 Notification of significant events**
- Provides an obligation for the corporation to pro-actively supply the Minister with any information that does, or may have, a material affect upon the corporation, a significant part of the corporation or the business of the corporation.
- Clause 27 Ministerial directions**
- Provides for the Minister to issue a direction to the corporation and requires the corporation to comply with that direction. Directions by the Minister will be tabled in the Legislative Assembly as a disallowable instrument.
- The corporation may be reimbursed the avoidable costs incurred by complying with a direction, subject to the Minister's discretion.
- Clause 28 Business plans**
- Provides for the corporation to present to the Minister a comprehensive business plan and financial reports. Also provides for the business plans to be provided to the Legislative Assembly to facilitate public accountability.
- Clause 29 Compliance with business plans**
- Provides for regular provision of the corporation's business plan.
- Clause 30 Dividends**
- Provides for the corporation to pay dividends within a reasonable period of being requested to do so by the Treasurer. Dividends may only be paid from profits of the corporation.
- Clause 31 Other reporting requirements**
- The corporation must comply with all reporting obligations. Where the Treasurer deems a particular report would be of benefit to the Territory, he or she may request that such a report is prepared by the corporation.

PART 5 - MISCELLANEOUS

Division 1 - Conduct of persons associated with the corporation

- Clause 32 Meaning of "relevant person" for Division 1**
Defines the class of people this Part of the Act applies to. It includes all people who, through the employment of their services by the corporation, may be in a position, or may have access to information, that can be used for personal gain or to the detriment of the corporation.
- Clause 33 Improper use of position**
Provides that people must not use a position they hold by virtue of their employment by the corporation to directly or indirectly obtain benefit for themselves, or to cause detriment to the corporation. Such actions are punishable by a civil penalty.
- Clause 34 Improper use of information**
Provides that people must not use information they gain by virtue of their employment by the corporation to directly or indirectly obtain benefit for themselves, or to cause detriment to the corporation. Such actions are punishable by a civil penalty.

Division 2 - General

Power to bind corporation

- Clause 35 Power to bind**
Provides for the corporation to be bound by the actions of the board or chief executive.
- Clause 36 Annual Report**
Provides for the inclusion of details relating to a Ministerial Direction in the Annual Report.
- Clause 37 Taxation**
Provides for a range of taxation equivalents to apply to the corporation similar to if it was established as a Territory Owned Corporation.

PART 6 - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

- Clause 38** **Transfer of assets, rights and liabilities**
Provides for all the assets and liabilities held by the business unit ACTION, within the Department of Urban Services, to be transferred to ACTION Corporation. The Minister will identify by instrument all assets or liabilities to be transferred.
- Clause 39** **Evidentiary certificate**
Provides for the chief executive of the administering department to document the receipt of items that have been transferred, upon establishment, to ACTION Corporation. This will provide a definitive description of assets that may be used to register assets with registering authorities.
- Clause 40** **Registration of changes in title to certain assets**
Provides for a registering authority to accept an evidentiary certificate signed by the chief executive as proof that an asset has been transferred to ACTION Corporation, and for the registering authority to register the asset.
- Clause 41** **Proceedings and evidence**
Provides that proceedings commenced prior to the establishment of ACTION Corporation by or against the Territory relating to public passenger transport may be continued by or against ACTION Authority as if there was no change in legal identity. Actions relating to personal injuries are excluded from this section and will continue against the Territory. Any new actions against ACTION Corporation arising after the date of commencement of this Act may be directed at ACTION Corporation. *(Check whether personal injury liability needs to be excluded.)*