

# ***Stadiums Corporation Bill 1999***

## **EXPLANATORY MEMORANDUM**

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Chief Minister  
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#### ***Outline***

The Act establishes the Stadiums Corporation as a statutory authority.

The Stadiums Corporation is granted the necessary authority to operate and manage sporting or entertainment facilities and associated events or festivals. A financial restriction is placed upon the magnitude of transactions Stadiums Corporation may conduct to ensure that non-routine decisions of significant impact on the value of the corporation require the consent of the Minister.

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.

The Act provides that where existing public servants become employed by Stadiums Corporation, they may transfer with their existing accumulated leave entitlements.

Assets and liabilities may be transferred to the corporation by instrument by the Minister.

There are no significant cost or revenue implications.

#### ***Objectives***

The Government has an interest in ensuring the Canberra community continues to enjoy a pre-eminent sporting and functions facility. This interest stems from the Government's role as owner and financier of Stadiums Corporation and beneficiary of financial returns.

The legislation provides for Stadiums Corporation to take over the business activities of Bruce Operations Pty Ltd. Stadiums Corporation will be responsible for the future administration of the stadium. The legislation will clarify the relationship of the administration of Bruce Stadium with the activities of the ACT Legislative Assembly.

The provisions will increase public oversight and accountability of the business activities of Bruce Stadium. This includes comprehensive reporting mechanisms to protect the value of the Government's investment.

## **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 – STADIUMS CORPORATION**

#### **Division 2.1 - Corporate Status**

##### **Establishment**

- Clause 4 Establishes the statutory authority known as Stadiums Corporation.

##### **Functions**

- Clause 5 Sets out the functions of Stadiums Corporation. This is to guide the strategic direction of the corporation.
- Sub-clause (a) Provides for the corporation to own, operate or manage sporting or entertainment facilities.
- Sub-clause (b) Provides for the corporation to organise or conduct sporting, cultural, entertainment or commercial events or festivals.
- Sub-clause (c) Provides for the corporation to provide facilities for events, festivals, meetings or functions.
- Sub-clause (d) Provides for the corporation to operate on a sound commercial basis.
- Sub-clause (e) Provides for the corporation to maximise the sustainable return to the Territory.
- Sub-clause (f) Provides for the corporation to perform services to the community in accordance with any agreement with the Minister.
- Sub-clause (g) Provides for the corporation to advise the Minister on all significant issues relating to the corporation and its activities.

- Sub-clause (h) Provides for the corporation to implement any directions from the Minister.
- Sub-clause (i) Provides for the corporation to undertake any such functions conferred on it under this Act or any other law of the Territory.
- Sub-clause (j) 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 2.2 - 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, 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 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 2.3 - 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 3.1 - 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 3.2 - 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 where existing public servants become employed by Stadiums Corporation, they may transfer with their existing entitlements. These include accumulated leave entitlements.

**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 requested to enable the Minister to effectively fulfil his or her role with regard to the corporation.
- 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 for the net reasonable expense of 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 the corporation to give to the Minister a written assessment of its performance in accordance with its 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 5.1 - 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 5.2 - General**

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

**Clause 35                    Power to bind corporation**

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 the assets and liabilities held by the Territory, identified by instrument, to be transferred to the corporation.
- 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 Stadiums 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 Stadiums Corporation, and for the registering authority to register the asset.
- Clause 41                      Proceedings and evidence**  
Provides that proceedings commenced prior to the establishment of Stadiums Corporation by or against the Territory may be continued by or against Stadiums Corporation as if there was no change in legal identity.