

2017

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

City Renewal Authority and Suburban Land Agency Bill 2017

EXPLANATORY STATEMENT

**Presented by
Mr Andrew Barr
Chief Minister**

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the City Renewal Authority and Suburban Land Agency Bill 2017 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is meant to be, a comprehensive description of the Bill.

Background

In mid-September 2016 the Government announced it would divide the work of the Land Development Agency (LDA) between two ACT Public Sector delivery entities: one focussing on leading and facilitating the redevelopment of Civic and the Northbourne Avenue Corridor, and the other dedicated to developing new suburbs.

A ministerial statement delivered on 15 December 2016 entitled *Building the Future* further outlined the Government's vision for the future of Canberra and provided additional detail of the intended role and structure of the delivery entities and the timeline for their formation.

This Bill gives effect to the Government's announcement on 8 March 2017 that it would – from 1 July 2017 – create:

- the City Renewal Authority (CRA) to drive urban renewal in Civic, the Northbourne Avenue Corridor and West Basin, and
- the Suburban Land Agency (SLA) to undertake all other Government land sales and estate development works.

As Canberra grows towards a population of half a million people, the Government is seeking to shape that growth to hold on to the best parts of the past while pursuing the opportunities of the future.

City Renewal Authority

The CRA will be constituted by this Bill as a territory authority with a governing board, and board-appointed chief executive officer (CEO). It will be responsible for leading, managing urban renewal works in declared urban renewal precincts. The first precinct to be declared will encompass Civic, the Northbourne Avenue Corridor and West Basin.

The CRA will be responsible within declared urban renewal precincts for:

- facilitating significant development projects including related land acquisitions and sales
- collaborating with the National Capital Authority (NCA) and the planning and land authority in relation to precinct planning and design standards
- undertaking work on sequencing and site selection for particular classes of development identified by the Government for inclusion in an urban renewal precinct
- conducting design competitions
- engaging with potential investors and developers at a national and international as well as local level
- conducting community engagement processes
- coordinating with other ACT Public Sector bodies (including directorates)
- undertaking site preparation and infrastructure works, and
- undertaking public realm improvements and place activation activities.

This precinct based-approach to facilitating urban renewal has proven successful in areas like Southbank in Brisbane and Elizabeth Quay in Perth.

The CRA will also be responsible for delivering the Haig Park master plan as part of its mission to improve public spaces throughout the proposed precinct.

The Bill provides no development approval powers to the CRA as is the case with some similar entities in other jurisdictions. The existing development approval processes and powers are undisturbed by this Bill and remain with either the NCA or the planning and land authority.

Suburban Land Agency

The SLA will be also constituted by this Bill as a territory authority with a separate governing board, and board-appointed CEO. It will be responsible for delivering new greenfield residential estates and non-precinct urban renewal projects.

All the SLA's functions are expressed in the Bill to be exercisable "with the approval of the Minister". This reflects the closer nexus of control over development outcomes and approaches the Government will have with the SLA. It will be responsible for:

- conducting all Government land sales and strategic acquisitions
- undertaking civil works for Government estate developments
- serving as the vehicle through which the Government will enter into joint venture or other commercial arrangements to deliver land development projects
- providing community information for operational elements of Government development projects; and
- conducting place making activities and establishment of new communities.

Overview of the Bill

The Bill establishes the CRA and the SLA.

The objects of the Bill are also to:

- promote and facilitate the orderly, efficient, and effective delivery of residential, commercial and industrial development in the public interest, including for urban renewal
- promote development that is environmentally sustainable and applies innovative environmental building and public domain design, and
- support, encourage and facilitate public and private sector investment and participation in the development of Canberra.

The Bill also makes a number of consequential amendments including to the:

- *Annual Reports (Government Agencies) Act 2004*
- *Financial Management Regulation 2005*
- *Legislation Act 2001*
- *Planning and Development Act 2007* – including repealing Chapter 4 which establishes the LDA and its governing board, and
- *Planning and Development Regulation 2008*.

The key principles underpinning the Bill are pursuit of:

- clarity about what is to be delivered
- clarity of roles and responsibilities
- genuine engagement with stakeholders and the wider community in design and implementation, and
- robust governance arrangements that effectively guide the CRA and the SLA's day-to-day operations, including in relation to the duties of officials and board members.

Important Concepts

Urban Renewal - Definition

The Bill defines *urban renewal* which provides the parameters for the objects, functions and role of the CRA. One of the objects of the SLA is urban renewal, other than in a declared urban renewal precinct.

Urban renewal means supporting, promoting, encouraging, facilitating or delivering:

- development for residential purposes
- development for commercial purposes
- development of industrial infrastructure
- development of capital works
- development of public infrastructure, and
- land improvements.

The term also includes carrying out work on public land, and reviewing and giving advice about work and development proposed to be carried out on private land.

Urban Renewal Precincts

The Bill provides that the minister may declare by notifiable instrument (NI) an area of land to be an urban renewal precinct. The NI declaring the precincts will describe the location of the land, include a map and set out, in general terms, the urban renewal priorities for the precinct.

The process to declare urban renewal precincts is aimed at ensuring that cooperation, collaboration and coordination occurs at the earliest stage of any considerations for urban renewal. It promotes consistency with key Commonwealth and ACT statutory planning documents, and requires engagement, cooperation and advice from relevant entities to frame a shared vision.

Outside an urban renewal precinct, the SLA would have the responsibility to encourage and promote urban renewal as part of its functions.

City Renewal Authority

The Bill establishes the CRA, provides its objects and functions, and establishes its top-level governance framework. The operations of the CRA will also be governed by the relevant provisions of the *Financial Management Act 1996* (FMA) including in relation to budgeting and financial reporting, and matters such as appointments and duties of governing board members and the term of their appointment. Its governance framework will be completed by internal and operational policies, procedures (including for example, in relation to community engagement) and delegations of decision-making authority.

The CRA's objects are to:

- encourage and promote a vibrant city through the delivery of design-led, people-focussed urban renewal,
- encourage and promote social and environmental sustainability, and
- operate commercially in accordance with sound risk management principles.

Supporting these objects, the Bill provides for the inclusion of the community and relevant entities in the planning and delivery of urban renewal, growing and diversifying the economy, and creating opportunities for private sector investment in urban renewal projects. This goal is reinforced by the collaboration, coordination and consultation requirements underpinning the Bill.

The CRA's functions are broad and varied. The CRA can buy and sell land, and undertake its own developments including infrastructure development works. It can also support and facilitate public and private sector investment and participation to achieve cohesive urban renewal throughout declared precincts.

The Bill provides flexibility for how the CRA will deliver urban renewal by permitting it to exercise its functions alone, or subject to the approval of the Minister and the

Treasurer, through subsidiaries, joint ventures or trusts, or by holding shares in, or other securities of, corporations.

The Bill provides for formal and public direction setting by the Minister (a statement of expectations) and for similarly public reporting of how those directions will be pursued by the board (a statement of operational intent). The Bill provides that the Minister must make an at least annual statement setting out the government's requirements and priorities in relation to urban renewal in declared urban renewal precincts. As soon as possible after the minister makes a statement of expectations, the CRA Board must give the Minister a draft statement of operational intent which details how the CRA intends to meet the government's expectations for the Minister's approval. Both the statement of expectations and the approved statement of operational intent are notifiable instruments. This makes the CRA's objectives, operations and planned achievements publicly available to promote cooperation, coordination and transparency.

Governance - City Renewal Authority Board, CEO and Staff

The CRA has a governing board, a board-appointed CEO and staff employed under the *Public Sector Management Act 1994* (the PSM Act). The Bill provides the composition of the CRA Board, which includes a chair, a deputy chair and three (3) expert members. The members of the CRA Board must have knowledge of and experience in at least one area relating to the functions of the CRA. This will bring broad knowledge, experience and expertise to the CRA as it implements its functions.

Section 77 of the FMA details the role of governing boards generally. In addition to those obligations and functions, the Bill provides the functions of the CRA Board are to:

- oversee the operations of, and exercise of functions by, the CRA
- promote the statement of expectations
- implement the statement of operational intent
- make arrangements about the conduct and operation of the board.

The FMA governs the appointment of members to territory entities which have a governing board, such as the CRA. The FMA also provides the process for ending appointments to governing boards.

The FMA also establishes the supporting infrastructure and governance arrangement for the CRA Board members. The Bill customises and adapts the duties in the FMA to take into account the high standards of probity and accountability that apply to public sector entities undertaking land-related projects and consistent with the Government's expectations in relation to sound stewardship of public resources. This recognises the significant community interest in the land and in the outcomes of urban renewal projects.

The Bill provides that an CRA Board member owes a duty to the Minister when acting as a board member to act in good faith, not to pursue personal interests at the expense of the CRA's interest, not to use board membership to gain personal

advantage, and not to cause detriment to the CRA or undermine the reputation of the CRA.

Generally, section 80 of the FMA governs the appointment of a CEO to the governing board of a territory authority. However, clause 26 of the Bill provides that section 80 of the FMA does not apply. Instead, the Bill provides that the CEO is appointed by the chair of the CRA Board. There is a requirement that the CEO be a public servant, and therefore subject to the duties, public sector values and requirements set out in the PSM Act.

The Bill provides that the CEO is not a member of the CRA Board.

Suburban Land Agency

The Bill establishes the SLA to deliver Government land releases (including commercial, industrial and residential land), and undertake Government estate development works. The SLA is also responsible for urban renewal projects outside declared urban renewal precincts.

The objects of the SLA are to encourage and promote inclusive communities through the delivery of people-focussed, suburban development that supports affordable housing, a safe and healthy population, social inclusion, housing choices, urban renewal outside declared urban renewal precincts and growth and diversification of the territory economy.

In exercising its functions, the SLA must act consistently with its statement of intent.

All of its functions are also expressed to be exercisable “with the approval of the Minister”.

The Bill provides flexibility for how the SLA will deliver its functions by permitting it to exercise its functions alone, or subject to approval from the responsible Minister and the Treasurer through subsidiaries, joint ventures or trusts, or by holding shares in, or other securities of, corporations.

To promote strong linkages among key entities - government, community, and developers – the Bill provides a requirement for the SLA to work with entities that have any interest in land that the SLA intends to buy, sell, improve or develop to encourage cohesive suburban development.

Governance – Suburban Land Agency Board and CEO

The SLA has a governing board, a CEO and a staff appointed under the PSM Act.

The Bill provides the composition of the SLA Board, which includes a Chair, a Deputy Chair and three (3) expert members. The members of the SLA Board must have knowledge of and experience in at least one area relating to the functions of the SLA. This will bring broad knowledge, experience and expertise to the SLA as it implements its functions.

The FMA governs the appointment of members to territory entities which have a governing board, such as the SLA. The FMA also provides the process for ending appointments to governing boards and how their meetings are conducted.

The Bill provides that an SLA Board member has a duty to the Minister when acting as a board member to act in good faith, not to pursue personal interests at the expense of the SLA's interest, not to use board membership to gain personal advantage, and not to cause detriment to the SLA or undermine the reputation of the SLA.

Generally, section 80 of the FMA governs the appointment of a CEO to the governing board of a territory entity. However, like clause 26 in relation to the appointment of the CEO of the CRA, the Bill displaces section 80 of the FMA in relation to the appointment of the CEO of the SLA. The Bill provides that the CEO is appointed by the Chair of the SLA Board. There is a requirement that the CEO be a public servant.

The Bill provides that the CEO is not a Board member.

Human Rights Impacts

The provisions of the Bill do not engage or affect human rights.

Provisions in detail

Part 1 – Preliminary

Clause 1 – Name of Act

This clause provides the name of the Act to be the *City Renewal Authority and Suburban Land Agency Act 2017*.

Clause 2 – Commencement

This clause provides that the Act commences on the day fixed by the Minister. Section 79 of the *Legislation Act 2001* (Legislation Act) applies in that if a provision has not commenced within six (6) months of the Act being notified, it automatically commences on the first day after that period. The intention is that the new arrangements will commence on 1 July 2017 to align with financial reporting cycles.

Clause 3 – Dictionary

This clause provides that the dictionary at the end of the Act is part of the Act.

Clause 4 – Notes

This clause provides that in accordance with ss127(1), (4) and (5) of the Legislation Act, notes included in the Act are explanatory and are not part of the Act.

Clause 5 – Objects

This clause lists the objects of the Act, which are to:

- establish the CRA
- establish the SLA
- promote and facilitate the orderly and efficient delivery of residential, commercial and industrial developments in the public interest, including urban renewal
- promote development that is environmentally sustainable and applies innovative environmental building and public domain design
- support, encourage and facilitate public and private sector investment and participation in the development of the Territory.

Part 2 – City renewal authority

Division 2.1 – Definitions – pt 2

Clause 6 – Definitions

This clause provides definitions of statement of expectations, statement of operational intent and urban renewal precinct as they are used in Part 2.

Division 2.2 – Establishment, objects and functions of city renewal authority

Clause 7 – Establishment of city renewal authority

This clause formally establishes the CRA.

Clause 8 – Objects of authority

This clause details the objects of the CRA which are to:

- encourage and promote a vibrant city through the delivery of design-led people-focussed urban renewal, including by creating opportunities –
 - to include the community and relevant entities in the design and delivery of urban renewal
 - to grow and diversify the Territory's economy
 - for private sector investment in urban renewal
- encourage and promote social and environmental sustainability, through
 - planning and delivery of urban renewal
 - improved urban infrastructure
 - responsiveness to demographic change in the ACT
- operate commercially in accordance with sound risk management practices.

Clause 9 – Functions of authority

This clause details the functions of the CRA – the actions it may undertake – in a declared urban renewal precinct in order to achieve its objects. The functions are broad and varied and include both undertaking works, and supporting others to achieve urban renewal. In this clause, support an outcome has a broad definition and includes promote, encourage, facilitate and deliver the outcome.

The CRA's functions are to:

- carry out urban renewal
- buy and sell leases of land on behalf of the Territory
- make arrangements for the public service or another entity to carry out development or works
- support public and private sector investment and participation in urban renewal, including supporting development that is attractive to potential investors and participants
- manage orderly urban renewal, including holding, managing and selling land and other property
- support cooperation between the CRA, the community, and relevant entities
- support high quality design, planning and delivery of urban renewal
- any other function given to the CRA under this Act or another territory law.

Subsection (2) promotes good governance and accountability by providing that the CRA may only exercise a function in a way that is consistent with the statement of operational intent.

Subsection (3) provides that the CRA may exercise its functions alone, or with the approval of the Minister and Treasurer, through subsidiaries, joint ventures or trusts, or by holding shares in, or other securities, or corporations.

Clause 10 – Authority’s role in cohesive urban renewal

Central to the Bill’s principles is cooperation, collaboration and consultation. The CRA has a role to bring together and work with other entities in relation to urban renewal.

This clause specifically mandates that principle for the CRA. The CRA must work with any entity that has an interest in land in an urban renewal precinct to encourage cohesive urban renewal. The CRA may require an entity to consult, including the public or another entity, and make arrangements for working cooperatively with another entity that has interest in the land. If the entity does not adhere to the CRA’s requirements, the CRA may refuse to exercise a function in relation to the land until the requirement has been fulfilled. While the CRA must collaborate with others, including government entities, those other entities will continue to perform their statutory functions. Therefore, the CRA is not responsible for implementing other functions such as development approval, environmental regulation or building approval.

Clause 11 – Ministerial directions to authority

Generally, the CRA Board will have discretion to exercise its functions to achieve its objects. However, to maintain government oversight of the CRA’s activities, clause 11 provides that the Minister may, at any time, give a written direction to the CRA about the exercise of the CRA’s functions or requiring the CRA to exercise a function. This gives the government the ability to exercise its ultimate control over the CRA’s activities. The Minister must consult with CRA and consider any comments the Board makes regarding the proposed direction before it is made. To ensure openness and transparency of the government’s directions to the CRA, such directions are notifiable.

Clause 12 – Territory to compensate authority for cost of complying with directions

Because the CRA may not have budgeted for the actions necessary to meet any direction made under clause 11, clause 12 provides that the Territory must pay to the CRA the reasonable net costs of complying with a direction. The amount payable is the amount agreed between the CRA and the Minister or, failing agreement, the amount decided by the Chief Minister.

This clause is similar to that which currently applies to the LDA. Similar arrangements are in place for Territory owned corporations complying with directions of their shareholders under the *Territory-owned Corporations Act 1990*.

Clause 13 – Annual report of authority

This clause provides that the CRA must prepare an annual report under the *Annual Reports (Government Agencies) Act 2004*. The clause also specifies what the annual report must include – the statement of expectations and statement of operational intent (see clauses 16 and 17 below respectively), report on the extent the statement of operational intent has been met, and if it has not been met reasons why it was not met.

Division 2.3 Authority board

Clause 14 – Establishment of governing board for authority

By this clause the CRA Board is formally established.

Clause 15 – Functions of authority board

Section 77 of the FMA details the role of governing boards generally.

This clause provides additional functions of the CRA Board which are:

- to oversee the operations of, and exercise of functions by, the CRA
- to promote the statement of expectations
- to implement the statement of operational intent
- to make arrangements about the conduct and operation of the CRA Board, and
- any other function given to the CRA Board under this Act or another territory law.

Clause 16 – Ministerial statement of expectation

The statement of expectation is a high-level statement by the Government of its requirements and priorities in relation to the work of the CRA. Clause 16 requires the Minister, at least once every 12 months, to make a statement of expectations. The statement may include any information the Minister believes will assist the CRA Board to implement the statement of expectations.

To promote openness and transparency of the government's priorities and requirements in relation to urban renewal in an urban renewal precinct, the statement of expectation is notifiable.

Clause 17 – Statement of operational intent

The clause requires the CRA Board to prepare a draft statement of operational intent setting out how the CRA will give effect to the statement of expectation made under clause 16.

The clause provides a feedback loop between the CRA Board and the Minister, by empowering the Minister to approve, not approve or approve with conditions the statement of operational intent. This ensures that the Minister is satisfied that the CRA through detailing its activities in the statement of operational intent will meet the government's expectations. Again, to promote openness and transparency, the approved statement of operational intent is notifiable.

Clause 18 – Delegation by authority board

This clause provides that the CRA Board may delegate its functions to the CRA CEO.

Section 231(2) of the *Legislation Act 2001* provides that if an appointer delegates a function to a delegate, the delegate may not sub-delegate the function. This subsection is a determinative provision. Section 6(2) of the *Legislation Act* provides that a determinative provision may be displaced expressly or by a manifest contrary intention.

Subsection (2) of clause 18 displaces section 231(2) of the Legislation Act by providing that the CRA CEO may sub-delegate to an authorised person a function delegated if the sub-delegation is authorised in writing by the CRA Board.

The clause defines authorised person to mean a public employee or a person prescribed by regulation.

Division 2.4 – Authority board members

Clause 19 – Duty of good conduct

This clause provides that the CRA Board members owe a duty to the Minister when acting as a Board member. The duties are:

- to act in good faith
- not to pursue personal interests at the expense of the CRA's interests
- not to use board membership to gain personal advantage
- not to cause detriment to the CRA or undermine the reputation of the CRA.

The duties set out in this clause supplement the requirements under the FMA and the PSM Act. The duties ensure the high standards of probity and accountability that apply to public sector entities undertaking land-related projects and consistent with the Government's expectations in relation to sound stewardship of public resources. It does not, however, displace the FMA duties.

Clause 19 – Authority board member appointments

This clause provides for the composition of the CRA Board – a Chair, a Deputy Chair and three (3) expert members. Subsection (2) specifies that a member of the CRA Board must have knowledge of and experience in at least one of the fields provided in the list:

- urban renewal
- architecture
- urban design
- civil engineering
- environmental sustainability
- social inclusion and community building
- law, public administration and governance
- financing major development projects.

A regulation may prescribe other criteria for the appointment of a person as an expert member.

The appointments of members of governing boards of Territory authorities, including the Chair and Deputy Chair is governed by Division 9.2 of the FMA. This Division of the FMA also provides the process by which a member of a governing board may be removed. Section 78(7) of the FMA provides that a member of a governing board of a territory authority must be for not longer than three (3) years.

Division 2.5 Authority committees

Clause 21 – Establishment of authority committees

This clause permits the CRA Board to establish committees to help it exercise its functions. Subsection (2) provides a non-exhaustive list of committees that the CRA Board may establish. The Executive, by regulation, may prescribe committees that the CRA Board must establish. Further, a regulation may prescribe matters on which a committee can provide advice, and functions of the CRA that may only be exercised after considering the advice of a committee.

Clause 22 – Exercise of committee functions

This clause vests the CRA Board the power to decide how a committee exercises its functions and the procedures for the meetings of a committee. If the CRA Board does not decide on how the committee exercises its functions or the procedure for the meetings of a committee, the committee may decide its own procedures.

Clause 23 – Membership of committees

This clause provides that a committee consists of the people appointed by the CRA Board, and that a committee may consist entirely or partly of CRA Board members.

Division 2.6 Authority financial matters

The note explains that the CRA must not give a guarantee without the Treasurer's written approval as per section 60 of the FMA.

Clause 24 – Proceeds of lease sales by authority

This clause provides that consideration received by the CRA for the sale of a lease of land is income of the CRA.

Clause 25 – Authority payment of funds to Territory

This clause gives the Treasurer the power to direct the CRA in writing to pay to the Territory the amount or an amount calculated in the way stated in the direction. The direction may also include how and when to make the payment and the conditions relating to payment.

In giving a direction the Treasurer must have regard to the CRA's assets and liabilities, its ability to exercise its functions and the requirement that the Territory obtain a reasonable return from the development and disposal of land.

To ensure openness and transparency, a Treasurer's direction is notifiable.

Clause 26 – Authority liability for territory taxes

This clause provides that the *City Renewal Authority and Suburban Land Agency Act 2017* does not exempt the CRA from liability for a tax under any other territory law.

Division 2.7 Authority CEO, staff and consultants

Clause 27 – Appointment of authority CEO

This clause displaces section 80 of the FMA which provides that the CEO of a territory authority is appointed by the Director-General with responsibility for the establishing Act after consultation with the relevant Minister. Instead, this clause vests the Chair of the CRA Board the power to appoint the CEO. The CEO must be a public servant and therefore is subject to the provisions of the PSM Act.

Further section 80 of the FMA provides that the CEO is a member of the governing board of a territory authority. However, subsection (4) of clause 26 of the Bill provides that the CEO is not a member of the CRA Board.

This serves to reinforce the accountability of the Board Chair to the Minister for outcomes achieved by the CRA, and the separate accountability of the CEO to the Board for the performance and management of the day-to-day operations of the CRA.

Clause 28 – Functions of authority CEO

This clause details the functions of the CRA CEO which are:

- to manage the day-to-day operations of the CRA
- to give administrative support to the CRA Board in the exercise of its functions
- any function given to the CRA CEO by the CRA Board, the Bill or another territory law.

Subsection (2) of this clause provides that, despite the CEO not being a member of the CRA Board (see clause 26 above), section 84 of the FMA applies to the CEO. This ensures the duties set out in that section apply to the CEO.

The CRA Board may give the CEO a written direction about the exercise of the CEO's functions.

Clause 29 – Authority CEO duty of good conduct

The clause provides that the CEO, in exercising the functions as the CEO, must do so with the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

This clause also expressly provides that the CEO has a duty to the CRA Board:

- to act in good faith
- not to pursue personal interest at the expense of the CRA's interests
- not to use the office to gain personal advantage
- not to cause detriment to the CRA or undermine the reputation of the CRA.

As a public servant, conduct requirements under the PSM Act apply to the CRA CEO.

Clause 30 – Delegation by authority CEO

The CEO may delegate their functions to an authorised person.

This clause displaces section 231(2) of the Legislation Act and provides that a delegate may sub-delegate a delegated function if authorised in writing by the CRA CEO.

In this clause, ‘authorised person’ means a public employee or a person prescribed by regulation.

Clause 31 – Authority’s staff

This clause provides that the CRA CEO may employ staff on behalf of the Territory. Those staff must be employed under the PSM Act.

Clause 32 – Authority arrangements for staff and facilities

This clause provides that the CRA CEO may make arrangements with the head of service to use the services of a public servant or Territory facilities.

Clause 33 – Authority contractors and consultants

This clause provides that the CRA CEO may engage consultants and contractors. However, such engagement must not be as a contract for employment.

This clause does not limit the CEOs’ ability to employ CRA staff (see clause 30 above).

Division 2.8 – Urban renewal precincts

Clause 34 – Urban renewal precinct may be declared

This clause provides that the Minister may declare an area of land to be an urban renewal precinct. Such a declaration is notifiable.

The clause also lists the matters that must be included in an urban renewal precinct declaration. The declaration must name the urban renewal precinct, describe the urban renewal precinct by reference to land, and set out a map of the precinct.

Clause 35 – Criteria for land being included in urban renewal precinct

This clause provides the criteria for including land in an urban renewal precinct. The declaration must promote urban renewal and be consistent with relevant planning documents.

In addition, prior to the Minister declaring an urban renewal precinct, the Minister must have considered advice from the CRA and the Minister responsible for the *Planning and Development Act 2007*.

Part 3 – Suburban land agency

Division 3.1 – Establishment, objects and functions of suburban land agency

Clause 36 – Establishment of suburban land agency

This section formally establishes the SLA.

Clause 36 – Objects of agency

This clause provides the objects of the SLA, which are to:

- encourage and promote:
 - inclusive communities through the delivery of people-focussed neighbourhoods
 - suburban development that supports affordable living, a safe and healthy population, social inclusion and housing choice
 - urban renewal, other than in an urban renewal precinct
 - growth and diversification of the Territory's economy
- operate commercially in accordance with sound risk management practices.

Clause 38 – Functions of agency

To achieve the SLA's objects and promote accountability, this clause provides the SLA's functions must only be exercised in a way that is consistent with its statement of intent, prepared under section 61 of the FMA. Its functions are:

- to buy and sell leases of land on behalf of the Territory
- to ensure a mixture of public and private housing in new suburbs
- to increase the supply of affordable and community housing
- to carry out the development of land
- any other functions given to the SLA under this Act or another territory law.

Subsection (3) permits the SLA to exercise its functions alone, or with the approval of the responsible Minister and the Treasurer, through subsidiaries, joint ventures or trusts, or by holding shares in, or other securities of, corporations.

Clause 39 – Agency's role in cohesive suburban development

This clause requires the SLA to work with any entity that has an interest in land that the SLA intends to buy, sell, improve or develop to encourage cohesive suburban development.

Clause 40 – Ministerial directions to agency

To maintain government oversight of the SLA's activities, this clause provides that the Minister may, at any time, give a written direction to the SLA about the exercise of the SLA's functions or requiring it to exercise a function in relation to its financial arrangements. This gives the government the ability to exercise its ultimate control over the SLA's activities.

The Minister must consult SLA and consider any comments made by the Board regarding the direction before it is made. To ensure openness and transparency of the government's directions to the SLA, such directions are notifiable instruments.

Clause 41 – Territory to compensate agency for cost of complying with directions

This clause provides that the Territory must pay to the SLA the reasonable net costs of complying with a direction. The amount payable is the amount agreed between the SLA and the Minister or, failing agreement, the amount decided by the Chief Minister.

Division 3.2 Agency board

Clause 42 – Establishment of agency board

This clause establishes the SLA Board.

Clause 43 – Functions of agency board

In addition to the functions of territory authorities under the FMA, this clause details the SLA Board's functions, which are to:

- oversee the operations of, and exercise of functions by, the SLA
- any other function given to the SLA Board under this Act or another territory law.

Clause 44 – Agency board member appointments

Sections 78 and 79 of the FMA deal with appointments to territory authorities.

This clause provides that the composition of the SLA Board is a Chair, a Deputy Chair and three (3) expert members.

Subsection (2) requires a member of the SLA Board to have knowledge of or experience in at least one of the following:

- urban design and planning
- social inclusion and community building
- civil engineering and civil works
- real-estate sales
- property development
- law, public administration and governance.

Clause 45 – Delegation by agency board

This clause provides the SLA Board the power to delegate its functions to the SLA CEO.

This clause displaces section 231(2) of the Legislation Act and provides that the CEO may sub-delegate to an authorised person a delegated function if authorised in writing by the SLA Board.

In this clause, 'authorised person' means a public employee or a person prescribed by regulation.

Division 3.3 Agency financial matters

The note at this division draws the reader's attention to section 60 of the FMA, where a territory authority, such as the SLA, must not give a guarantee without the Treasurer's written approval.

Clause 46 – Proceeds of lease sale by agency

This clause provides that consideration received by the SLA for the sale of a lease of land is income of the SLA.

Clause 47 – Agency payment of funds to Territory

This clause gives the Treasurer the power to direct the SLA in writing to pay to the Territory the amount or an amount calculated in the way stated in the direction. The direction may also include how and when to make the payment and the conditions relating to payment.

In giving a direction the Treasurer must have regard to the SLA's assets and liabilities, its ability to exercise its functions and the requirement that the Territory obtain a reasonable return from the development and disposal of land.

To ensure openness and transparency, a Treasurer's direction is a notifiable instrument.

Clause 48 – Agency liability for territory taxes

This clause provides that this Act does not exempt the SLA from liability for a tax under any other territory law.

Division 3.4 – Agency CEO, staff and consultants

Clause 49 – Appointment of agency CEO

This clause displaces section 80 of the FMA which provides that the CEO of a territory authority is appointed by the Director-General with responsibility for the establishing Act after consultation with the relevant Minister. Instead, this clause vests in the Chair of the SLA Board the power to appoint the CEO. The CEO must be a public servant and therefore is subject to the provisions of PSM Act.

Section 80 of the FMA provides that the CEO is a member of the governing board of a territory authority.

Subsection (4) expressly provides that the SLA CEO is not a member of the SLA Board. This serves to reinforce the accountability of the Board Chair to the Minister for outcomes achieved by the SLA, and the separate accountability of the CEO to the Board for the performance and management of the day-to-day operations of the CRA.

Clause 50 – Functions of agency CEO

This clause details the functions of the SLA CEO which are:

- to manage the day-to-day operations of the SLA
- any function given to the CEO by the SLA Board, this Act or another territory law.

Subsection (2) of this clause provides that, despite the CEO not being a member of the SLA Board (see clause 47 above), section 84 of the FMA applies to the CEO. This ensures the duties set out in that section apply to the CEO.

The SLA Board may, at any time, give written directions to the SLA CEO about the exercise of the SLA CEO's functions.

Clause 51 – Agency CEO duty of good conduct

The clause provides that the CEO, in exercising the functions as the CEO, must do so with the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

This clause also expressly provides that the CEO has a duty to the SLA Board:

- to act in good faith
- not to pursue personal interest at the expense of the SLA's interests
- not to use the office to gain personal advantage
- not to cause detriment to the SLA or undermine the reputation of the SLA.

As a public servant, conduct requirements under the PSM Act apply to the SLA CEO.

Clause 52 – Delegation by agency CEO

This clause provides the SLA CEO the power to delegate its functions to an authorised person.

This clause displaces section 231(2) of the Legislation Act and provides that a delegate may sub-delegate a delegated function if authorised in writing by the SLA CEO.

In this clause, 'authorised person' means a public employee or a person prescribed by regulation.

Clause 53 – Agency staff

This clause provides that the CEO may employ staff on behalf of the Territory. Such staff must be employed under the PSM Act.

Clause 54 – Agency arrangements for staff and facilities

This clause provides that the SLA CEO may arrange with the head of service to use the services of a public servant or Territory facilities.

Clause 55 – Contractors and consultants

This clause provides that the SLA CEO may engage consultants and contractors. However, such engagement must not be as a contract for employment.

This section does not limit the CEO's ability to employ SLA staff (see clause 52 above).

Part 4 – Miscellaneous

Clause 56 – Sharing of protected information

This clause overrides other territory laws which may prohibit the sharing or disclosing of information to parts of the ACT Government, including directorates.

This clause defines information, information holder and protected information for this section.

An information holder who requires the protected information under this or any other territory law may ask another information holder for protected information if the information is required by them for the exercise of a function under this Act or another territory law.

Additionally, the Minister may ask an information holder for protected information.

This section is intended to ensure, for example, the responsible portfolio directorate and the Treasury in particular are able to access all information about the performance and activities of the two delivery entities to support the conduct of their financial and non-financial performance monitoring and oversight functions, as well as provide advice to the Minister to support the holding of board chairs to account for the activities of those entities.

Clause 57 – Regulation-making power

This clause provides the Territory Executive with a regulation making power. This clause provides that a regulation may create offences and fixed maximum penalties of not more than 20 penalty units for the offence.

Part 10 – Transitional

Clause 200 – Transitional regulation

Clause 200 enables the Executive to make regulations dealing with transitional matters. The clause contains 2 different regulation making powers.

Clause 200(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Clause 200(2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify Part 10 of the Act (including in relation to another territory law), and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Clause 200(3) gives a regulation under section 200(2) full effect according to its terms. A provision of Part 10 of the Act modified by regulation will operate in the

same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of Part 10 of the Act has no ongoing effect after the expiry of that Part.

Clause 201 – Expiry – pt 10

This clause provides that Part 10 of the Act expires one year after the *City Renewal Authority and Suburban Land Agency Act 2017* section 3 commences.

Part 11 – Consequential amendments

Clause 202 – Legislation amended – sch 1

This clause provides that the Act upon commencement amends legislation mentioned in schedule 1.

Schedule 1 – Consequential amendments

Part 1.1 – Annual Reports (Government Agencies) Act 2004

[Clause 1.1] – Section 7(2), note, new dot point

This clause updates a note at section 7(2) of the *Annual Reports (Government Agencies) Act 2004* inserting the CRA as a public sector body that must prepare an annual report.

Part 1.2 – Financial Management Regulation 2005

[Clause 1.2] – Section 4 and section 5

This clause inserts the Land Development Agency into sections 4 and 5 of the Financial Management Regulation prescribing that Divisions 9.6 and 9.7 apply to the Land Development Agency after it is dissolved.

Part 1.3 – Legislation Act 2001

[Clause 1.3] – Dictionary, new definition of *city renewal authority*

This clause inserts the definition of CRA into the Legislation Act dictionary.

[Clause 1.4] – Dictionary, part 1, definition of *land development agency*

This clause removes the definition of the land development agency from the Legislation Act dictionary.

[Clause 1.5] – Dictionary, new definition of *suburban land agency*

This clause inserts the definition of SLA into the Legislation Act dictionary.

Part 1.4 – Planning and Development Act 2007

[Clause 1.6] – New section 19

This clause specifically mandates that the planning and land authority must work with the CRA and the SLA to encourage cohesive planning and development of land.

[Clause 1.7] – Section 20(2)

This clause removes land agency and replaces it with CRA and SLA in the Planning and Development Act to permit the Planning and Land Authority to sub-delegate the granting of leases on behalf of the Executive to the two delivery entities.

[Clause 1.8] – Chapter 4

This clause removes chapter 4 of the Planning and Development Act establishing the LDA from that Act.

[Clause 1.9] – Section 229(4)(c)

This clause removes the prohibition of the Minister appointing a member of the Land Development Agency staff to an inquiry panel for an environmental impact statement.

[Clause 1.10] – New chapter 23

This clause inserts a new chapter 23 into the Planning and Development Act providing transitional provisions so the Land Development Agency can comply with its legislative requirements to prepare a report or financial statement for all or part of the 2016-2017 financial year.

The new chapter expires one year after section 3 of the City Renewal Authority and Suburban Land Agency Act commences.

[Clause 1.11] – Dictionary, note 2

This clause inserts CRA and SLA into the note to the dictionary of the Planning and Development Act.

[Clause 1.12] – Dictionary, definition of *chief executive officer, land agency, and land agency board*

This clause removes the definitions of the CEO of the LDA, the LDA and the LDA Board from the Planning and Development Act dictionary.

Part 1.5 – Planning and Development Regulation 2008

[Clause 1.13] – New section 26(3A)

This clause inserts a new provision that prescribes the CRA as a referral entity for the development application in relation land in a urban renewal precinct.

[Clause 1.14] – Section 26(4), new definition of *urban renewal precinct*

This clause inserts the definition of urban renewal precinct into the Planning and Development Regulation.

[Clause 1.15] - Section 111(1)(a)

This clause removes as a criterion for the direct sale of a lease of land in the City West precinct to the Australian National University ‘a development deed for the land has been entered into between the university and the land agency.’

[Clause 1.16] – Dictionary, note 3

This clause removes ‘land agency’ from a note in the dictionary in the Planning and Development Regulation.