



Australian Capital Territory

Territory Owned Corporations Act 1990 No 53

Republication No 8

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About this republication

The republished law

This is a republication of the *Territory Owned Corporations Act 1990* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 28 March 2003. It also includes any amendment, repeal or expiry affecting the republished law to 28 March 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Territory Owned Corporations Act 1990

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Australian Capital Territory

Territory Owned Corporations Act 1990

An Act to provide for the establishment of government enterprises as
Territory owned corporations

Part 1 Preliminary

1 Short title

This Act may be cited as the *Territory Owned Corporations Act 1990*.

3 Definitions for Act

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155)

borrowing, in relation to a Territory owned corporation or a subsidiary, includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the corporation or subsidiary.

company means a body corporate limited by shares that is a company for the Corporations Act.

group, in relation to a Territory owned corporation, means the corporation and any subsidiary.

non-voting share means a share in a Territory owned corporation that is not a voting share.

Portfolio Minister, in relation to a Territory owned corporation, means the Minister who has administrative responsibility in respect of the corporation.

securities, includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

statement of corporate intent means a statement prepared in accordance with section 20.

subsidiary, in relation to a Territory owned corporation, means a body corporate that—

- (a) under the Corporations Act is a subsidiary of the corporation; and
- (b) all of the issued share capital of which is held by or on behalf of the corporation.

Territory owned corporation means a company referred to in section 6 (1).

voting share means a share in a Territory owned corporation that confers the right to vote at a general meeting.

voting shareholder, in relation to a Territory owned corporation, means the holder of a share in the corporation that confers the right to vote at a general meeting.

- (2) A reference to a ***voting shareholder*** is, in relation to a group or a subsidiary, a reference to a voting shareholder of the Territory owned corporation that—
 - (a) in the case of a group, is the holding company of the group; and
 - (b) in the case of a subsidiary, is the ultimate holding company of the subsidiary.
- (3) A reference to the ***voting shareholders*** is a reference to the voting shareholders acting in concert.

4 Application of Act

- (1) In its application to ACTEW Corporation Limited, this Act applies subject to the modifications specified in schedule 4.
- (2) In its application to ACTTAB Limited, and to the staff of ACTTAB Limited, this Act applies subject to the modifications specified in schedule 5.

Part 2 Establishment of corporations

6 Territory owned corporations

- (1) A company specified in schedule 1 is a Territory owned corporation.
- (2) The regulations may amend schedule 1 to reflect a change in the name of a company.

7 Principal objective of corporations

The principal objective of a Territory owned corporation is to carry on business successfully and, to this end—

- (a) to operate at least as efficiently as any comparable business; and
- (b) to maximise the sustainable return to the Territory on its investment in the corporation in accordance with the performance targets contained in the latest statement of corporate intent of the corporation.

8 Status

- (1) Subject to this and any other Act, a Territory owned corporation or a subsidiary, by reason only of its status as such—
 - (a) is not entitled to any immunity or privilege of the Crown; and
 - (b) is not and does not represent the Territory; and
 - (c) is not exempt from a tax, duty, fee or charge payable under an Act.

- (2) The Territory is not liable for the debts, liabilities and obligations of a Territory owned corporation or a subsidiary unless—
 - (a) this or another Act provides that the Territory is liable; or
 - (b) the Territory agrees to be liable.

9 Notification to Assembly

- (1) Where a company becomes a Territory owned corporation or a subsidiary, the Portfolio Minister shall, within 15 sitting days of the occurrence, lay before the Legislative Assembly—
 - (a) a statement setting out—
 - (i) the names of the shareholders; and
 - (ii) a description of the principal activities to be carried out by the company; and
 - (b) a copy of the constitution of the company.
- (2) If there is a change in a matter specified in the statement or in the constitution, the Minister shall, within 15 sitting days of the change, lay before the Legislative Assembly a further statement setting out—
 - (a) in the case of a change in a matter specified in subsection (1) (a)—details of the change; and
 - (b) in the case of a change in the constitution—a summary of the change.

10 Legal obligations

The obligations imposed by this Act on a company or the directors or shareholders of a company are additional to the obligations that are imposed upon them by any other law or the constitution of the company.

11 Constitution

- (1) The voting shareholders of a Territory owned corporation must ensure that the constitution of the corporation or any subsidiary always contains provisions to the effect of those required by schedules 2 and 3.
- (2) If the constitution of a company that becomes a Territory owned corporation or subsidiary does not comply with schedule 2 or 3, the voting shareholders must ensure that compliance is achieved as soon as possible.
- (3) The Legislative Assembly may approve a provision in the constitution of a Territory owned corporation or subsidiary that is inconsistent with this Act.
- (4) A provision in the constitution of a Territory owned corporation or subsidiary that—
 - (a) is inconsistent with this Act; and
 - (b) has not been approved by the Legislative Assembly;is of no effect to the extent of the inconsistency.

12 Directors

- (1) Subject to this section, a person is not eligible to be appointed as director of a Territory owned corporation or a subsidiary unless, in the opinion of the voting shareholders, he or she has the expertise or skills necessary to assist the corporation to achieve its principal objective.
- (2) Subject to subsection (3), the voting shareholders shall not—
 - (a) appoint a director of a Territory owned corporation; or
 - (b) consent to the appointment of a director of a subsidiary;unless, before so doing, they have—
 - (c) consulted with the relevant committee; and

- (d) considered any recommendation made by the committee, being a recommendation made within 30 days after the consultation.
- (3) Where, for any reason, the number of directors of a Territory owned corporation or a subsidiary falls below—
 - (a) if the constitution of the corporation or subsidiary provides or provide for the minimum number of directors—that number; or
 - (b) in any other case—the minimum number of directors required under the Corporations Act;

the *voting shareholders* are not required to comply with subsection (2) in relation to an appointment that, when made, will raise the number of directors to the number referred to in paragraph (a) or (b), as the case requires.

- (4) In this section:

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for this section; or
- (b) where no nomination in paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

13 Shares in corporations

- (1) The Chief Minister may, in writing, authorise a person to participate in the formation of a company that it is intended will become a Territory owned corporation or a subsidiary.
- (2) The Chief Minister may, in writing, authorise a person to hold, on behalf of the Territory, a voting share in a company that is, or it is intended will become, a Territory owned corporation.
- (3) The Treasurer may, in writing, authorise a person to hold, on behalf of the Territory, a non-voting share in a company that is, or it is intended will become, a Territory owned corporation.

- (4) A person is eligible to hold a share or a right relating to a share in a Territory owned corporation only if—
- (a) in the case of a voting share—he or she is a Minister and has been authorised under subsection (2); or
 - (b) in the case of a non-voting share—
 - (i) he or she has been authorised under subsection (3); or
 - (ii) the person is a Territory owned corporation; or
 - (c) the person is eligible under subsection (9).
- (5) Subject to subsection (9), a person who holds a share or a right relating to a share in a Territory owned corporation holds the share or right on trust for the Territory.
- (6) The Chief Minister may, in writing, direct a person who holds a voting share or a right relating to a voting share on trust for the Territory to transfer it to another person named in the instrument.
- (7) The Treasurer may, in writing, direct a person who holds a non-voting share or a right relating to a non-voting share on trust for the Territory to transfer it to a person (including the corporation that has issued the share or right) named in the instrument.
- (8) A direction under subsection (6) or (7) is effective only if—
- (a) the proposed transferee is eligible under subsection (4) (a) or (b) to hold the share or right; or
 - (b) the Legislative Assembly has, by resolution, approved the direction.
- (9) If the Legislative Assembly approves a direction under subsection (8) (b), a person to whom a share or right is transferred under to the direction—
- (a) is eligible to hold the share or right; but

- (b) subsection (5) does not apply to the person in relation to the share or right so transferred.
- (10) A person who holds a share or right on trust for the Territory may not transfer it otherwise than under a direction under this section.

14 Acquisition of subsidiaries

- (1) A Territory owned corporation or a subsidiary shall not enter into a specified transaction if, as a result of the transaction, a company would or could become a partially owned subsidiary of the Territory owned corporation or subsidiary.
- (2) In this section:

partially owned subsidiary means a company that—

- (a) is a subsidiary, within the meaning of the Corporations Act, of a Territory owned corporation or subsidiary; and
- (b) not all of the issued share capital of which is held by or on behalf of the corporation or subsidiary.

specified transaction means—

- (a) the participation, whether direct or indirect, in the formation of a company; or
- (b) the acquisition of shares in a company; or
- (c) an agreement to underwrite the issue of shares in a company or proposed company; or
- (d) the lending of money on the security of shares in a company.

Part 3 Accountability

15 Provision of information

A Territory owned corporation or a subsidiary shall, upon request, provide to the voting shareholders all the information that they may require.

16 Acquisition and disposal of subsidiaries and undertakings

- (1) A Territory owned corporation or a subsidiary shall not, without the prior written consent of the voting shareholders—
 - (a) dispose of any of its main undertakings; or
 - (b) participate, directly or indirectly, in the formation of a company that, upon incorporation, will be a subsidiary; or
 - (c) enter into a transaction, contract or understanding whereby a company becomes or ceases to be a subsidiary; or
 - (d) acquire, dispose of, mortgage, or give security over, a significant asset, or give a charge over the whole or a significant part of its undertaking or assets.
- (2) A consent may be given subject to a condition and, where it is so given, the Territory owned corporation or subsidiary shall not carry out the activity that the consent refers to until the condition is satisfied.
- (3) Where a consent has been given in respect of a matter specified in subsection (1) (a), (b) or (c), the Portfolio Minister shall lay before the Legislative Assembly within 15 sitting days of the giving of the consent a statement setting out details of the matter consented to.

- (4) A Territory owned corporation or a subsidiary shall not—
- (a) dispose of any of its main undertakings; or
 - (b) enter into a transaction, contract or understanding whereby a company ceases to be a subsidiary;
- unless the Legislative Assembly, by resolution, has approved the disposal, or the transaction, contract or understanding, as the case requires.

17 Directions to corporations

- (1) Where—
- (a) the voting shareholders of a Territory owned corporation request it or a subsidiary to perform, cease to perform or refrain from performing an activity or to perform an activity in a manner that is different from the manner in which the directors intend to perform the activity; and
 - (b) the directors of the company advise the voting shareholders that compliance with their request would not be in the best commercial interest of the company;
- the voting shareholders may, by written direction, require the company to comply with the request.
- (2) The company shall comply with a lawful direction.
- (3) The directors of a company are not to be taken to be in breach of any duty under a law or the constitution of the company by reason only of their compliance with a lawful direction.
- (4) The Portfolio Minister shall lay before the Legislative Assembly—
- (a) a copy of a direction; and
 - (b) a statement setting out the estimated net reasonable expense of complying with it;
- within 15 sitting days of the issue of the direction.

- (5) The Territory shall reimburse the company for the net reasonable expense of complying with a direction.
- (6) In this section a reference to *net reasonable expense* is a reference to the difference between—
 - (a) the reasonable expense of complying with the direction; and
 - (b) the expense (if any) that the company would have incurred in respect of the activity that is the subject of the direction, if the direction had not issued.
- (7) An amount is not payable under subsection (5) unless it is agreed to by the Treasurer and the company or, failing agreement, is determined by the Chief Minister.

18 Audit

- (1) A Territory owned corporation or a subsidiary, or the directors of such a corporation or of a subsidiary, shall not appoint a person other than the auditor-general as auditor of the company.
- (2) A company that has appointed the auditor-general as its auditor shall pay his or her reasonable fees and expenses.
- (3) In default of agreement the reasonable fees and expenses of the auditor-general shall be determined by the Treasurer.

19 Preparation of statement of corporate intent

- (1) The directors of a Territory owned corporation shall submit to the voting shareholders a draft statement of corporate intent in relation to the corporation or, if the corporation has a subsidiary, in relation to the group, within 3 months after the corporation becomes a Territory owned corporation and at subsequent intervals not exceeding 12 months specified by the Treasurer in writing.

- (2) The directors shall—
- (a) consider any comments made within 1 month of the submission of the draft statement by the voting shareholders; and
 - (b) consult with the voting shareholders on such of the comments as the directors do not agree with, with a view to reaching agreement; and
 - (c) make such changes to the draft statement as are necessary to give effect to the comments agreed to and any agreement under paragraph (b); and
 - (d) give a statement of corporate intent to the voting shareholders within 2 months after the delivery of the draft.
- (3) The Portfolio Minister shall lay a statement of corporate intent before the Legislative Assembly within 15 sitting days after receiving it.
- (4) Before laying a statement before the Legislative Assembly the Portfolio Minister may delete from the statement any part dealing with commercially sensitive information but, if he or she does so, he or she shall lay before the Legislative Assembly, at the same time as he or she lays the statement, a further statement setting out the general nature of the material deleted and the reason for the deletion.
- (5) Except for the purpose of giving effect to an Act, a person shall not, before a statement is laid before the Legislative Assembly, publish or disclose information or material that is contained in the statement or in a draft of a proposed statement.

20 Statement of corporate intent

- (1) A statement of corporate intent shall, in relation to the Territory owned corporation or the group of companies comprising a Territory owned corporation and any subsidiaries (as the case may be), contain the following in respect of the financial year it relates to and each of the 2 next following financial years:
 - (a) the commercial objectives of the group;
 - (b) a description of the main undertakings of the group;
 - (c) a description of the nature and scope of the activities to be undertaken;
 - (d) business and corporate strategies;
 - (e) the targets and performance measurements by which the performance of the corporation or group may be judged in relation to its stated objectives;
 - (f) any other information that the voting shareholders may have requested in writing the directors of the Territory owned corporation to include in the statement.
- (2) A statement of corporate intent shall relate to—
 - (a) in the case of the first statement of a Territory owned corporation—the financial year that ends on 30 June next following the day when the company becomes a Territory owned corporation; and
 - (b) in any other case—the financial year during which the statement is to be given to the voting shareholders.

21 Modification of statement

- (1) The directors may, with the agreement of the voting shareholders, modify a statement of corporate intent.
- (2) A modification shall not be made unless written details of the proposed modification are furnished to the voting shareholders and they agree to the proposed modification.
- (3) Section 19 (2) and (5) apply in relation to a proposed modification as if it were a draft statement.
- (4) Section 19 (3), (4) and (5) apply in relation to a modification as if it were a statement.
- (5) A modification laid before the Legislative Assembly is incorporated with the statement that it modifies.

22 Annual report

- (1) The directors of a Territory owned corporation shall furnish to the voting shareholders within the prescribed time after the end of each financial year of the corporation an annual report in accordance with this section on the operations of the corporation or, if the corporation has subsidiaries, the group in the financial year.
- (2) The report shall comprise—
 - (a) a report on the operations of the corporation or group; and
 - (b) such other information as has been requested by the voting shareholders in order to make an informed assessment on the operations; and
 - (c) such accounts, reports and financial statements as, under a law of the Commonwealth relating to corporations, are required to be made out in respect of the corporation and, in the case of a group, each subsidiary and the group as a whole; and
 - (d) a copy of the auditor-general's report on the accounts, reports and financial statements referred to in paragraph (c), stating—

- (i) whether they give a true and fair view of the profit or loss and state of affairs; and
 - (ii) whether they comply with applicable accounting standards; and
 - (e) an assessment of the performance of the corporation or group in relation to its objectives that includes, but is not limited to, an assessment of the performance in relation to the targets and performance measurements set out in the relevant statement of corporate intent; and
 - (f) particulars of the manner in which the corporation or group has complied with any directions under section 17 (whether given during the financial year or earlier) and of the cost of compliance.
- (3) Where a report, information or material required by this section is also required to be produced under a law of the Commonwealth dealing with the regulation of companies, it may be produced for this section in the manner required by that law.
- (4) The Portfolio Minister shall lay a copy of a report under this section before the Legislative Assembly within 6 sitting days of receiving it.
- (5) In this section:

group, in relation to a Territory owned corporation, means the corporation and any subsidiary for this section.

prescribed time means the time fixed under of the *Annual Reports (Government Agencies) Act 1995*, section 11 or, if that time has been extended in accordance with that Act, that time as extended.

subsidiary, in relation to a Territory owned corporation, means a body corporate that, under the Corporations Act, is a subsidiary of the corporation.

23 Financial year

A Territory owned corporation or a subsidiary shall not, without the consent of the voting shareholders, adopt or have a financial year other than a period of 12 months commencing on 1 July.

Part 4 Borrowing

24 Borrowing from Territory

The Treasurer may, on behalf of the Territory, lend money to a Territory owned corporation or a subsidiary on such terms and conditions as the Treasurer, by instrument, determines.

25 Borrowing otherwise than from Territory

- (1) A Territory owned corporation or subsidiary may, within borrowing limits approved in writing by the Treasurer in respect of a financial year—

- (a) borrow money, otherwise than from the Territory; or
- (b) raise money, otherwise than by borrowing;

that is from time to time necessary for the exercise of its powers or the performance of its functions.

- (2) Without limiting subsection (1), the corporation or subsidiary may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing in securities.
- (3) A borrowing of money, or a raising of money otherwise than by borrowing, may be made, in whole or in part, in a currency other than Australian currency.
- (4) For this section—
- (a) the issue by a corporation or subsidiary of an instrument acknowledging a debt in consideration of—
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit;

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the corporation or

subsidiary, shall be deemed to be a raising, otherwise than by borrowing, of the amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the corporation or subsidiary, otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the corporation or subsidiary, shall be deemed to be a raising, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

26 Security

A corporation or subsidiary may give security over the whole or any part of its assets for—

- (a) the repayment of money borrowed under section 24 or 25 (1) (a) and the payment of interest on money so borrowed; or
- (b) the payment of money (including any interest) that the corporation or subsidiary is liable to pay with respect to money raised by virtue of section 25.

27 Borrowing not otherwise permitted

- (1) A Territory owned corporation or subsidiary shall not borrow, or raise money otherwise than by borrowing, except in accordance with this part.
- (2) A contract is not illegal, void or unenforceable by reason only that this part has not been complied with.

28 Guarantee by Territory

The Territory may guarantee, in such manner and on such conditions as the Treasurer thinks fit—

- (a) the repayment of the principal of, and the payment of interest on, any sum that a Territory owned corporation or subsidiary borrows; and
- (b) the performance by a Territory owned corporation or a subsidiary of a function or of an obligation under a contract.

Part 5 Territory taxes

29 Territory taxes

- (1) Tax is not payable by a Territory owned corporation or a subsidiary in relation to—
 - (a) an exempt activity; or
 - (b) an instrument or document prepared, made, executed or lodged to give effect to, or in connection with, an exempt activity; or
 - (c) a transaction entered into for the purpose of an exempt activity.
- (2) Where an activity, instrument, document or transaction is within a paragraph of subsection (1), the Treasurer shall certify in writing that the activity, instrument, document or transaction (as the case may be) is one to which subsection (1) applies.
- (3) A certificate under this section is evidence of the matters stated in the certificate.
- (4) This section does not apply to a Territory owned corporation prescribed for the *Taxation (Government Business Enterprises) Act 2003*, section 9 or to a subsidiary of such a corporation.
- (5) In this section:
exempt activity means—
 - (a) the incorporation of a relevant company; or
 - (b) the acquisition of shares in a relevant company; or
 - (c) the issue or transfer of shares in a relevant company; or
 - (d) the transfer of assets from the Territory or an authority of the Territory to a relevant company; or
 - (e) the assumption of responsibility by a relevant company for a liability of the Territory or an authority of the Territory; or

- (f) an activity or thing necessary to give effect to, or incidental to, another exempt activity.

relevant company means—

- (a) a Territory owned corporation; or
- (b) a subsidiary; or
- (c) a company that the Portfolio Minister certifies in writing that it is intended will become a Territory owned corporation or subsidiary.

tax includes a duty, fee, levy or charge payable under an Act.

31 Borrowing levy

- (1) A Territory owned corporation or subsidiary that borrows moneys, whether from the Territory or otherwise, shall pay to the Territory such amount, or an amount calculated in such a manner, as the Treasurer determines in writing.
- (2) An amount payable under this section shall be paid in such a manner, or by such instalments, as the Treasurer determines in writing.
- (3) A determination under this section may be made in relation to a borrowing contract or to a class of borrowing contracts.

Part 6 Miscellaneous

32 Profits available for payment of dividends

- (1) A Territory owned corporation or subsidiary shall pay a dividend only out of profits lawfully available for the purpose.
- (2) For the purpose of calculating the profits that, in respect of a financial year, are available for the payment of a dividend, the directors shall deduct from the profits of the company for that year any amount that, under another Act, is payable out of those profits.

33 Voting equality

A Territory owned corporation shall not issue shares to a voting shareholder if the issue would result in a voting shareholder being able to cast a greater number of votes at a meeting than another voting shareholder.

33A Benefits retained and preserved

- (1) This section applies to a person employed by, or engaged as a member of the staff of, a Territory owned corporation established on or after 1 January 1992 who, immediately before being employed or engaged by the corporation, was appointed or employed under the *Public Service Act 1922* (Cwlth) or the *Public Sector Management Act 1994*.
- (2) A person to whom this section applies retains the benefits (if any) in respect of—
 - (a) long service leave; and
 - (b) maternity leave; and
 - (c) parental leave; and
 - (d) recreation leave; and

(e) leave of absence on account of illness;

that had accrued to that person immediately before being employed or engaged by the relevant Territory owned corporation.

- (3) A person to whom this section applies shall, on or after 1 January 1992, be entitled to the benefits in respect of the matters referred to in subsection (2) (a) to (e) that are no less favourable to that person than the benefits to which that person would have been entitled from time to time in respect of those matters if he or she had continued to be appointed or employed under the Act under which he or she was appointed or employed immediately before being employed by, or engaged as a member of the staff of, the Territory owned corporation.

33B Affirmative action

- (1) The provisions of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (Cwlth) apply, by force of this section, to a Territory owned corporation or a subsidiary, as if the corporation or the subsidiary were not an authority within the meaning of that Act.
- (2) The provisions referred to in subsection (1) apply with such modifications (if any) as are prescribed.

34 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*

Schedule 1 Territory owned corporations

(see s 6)

- 1 ACTEW Corporation Limited
- 2 ACTTAB Limited
- 3 Totalcare Industries Limited

Schedule 2 Provisions to be included in constitution of Territory owned corporation or subsidiary

(see s 11)

Provisions to the effect of the following provisions are to be included in the constitution of a company that is a Territory owned corporation or a subsidiary:

- 1 The constitution may not be altered in a way that is inconsistent with the provisions of this schedule unless and until a resolution approving the alteration or addition has been passed by the Legislative Assembly.
- 2 The provisions of the *Territory Owned Corporations Act 1990* prevail over any inconsistent provisions of the constitution that have not been approved by the Legislative Assembly.
- 3 The constitution shall state the objects of the company.

Schedule 3 Further provisions to be included in constitution of Territory owned corporation or subsidiary

(see s 11)

Part 3.1

Provisions to the effect of the following provisions are to be included in the constitution of a company that is a Territory owned corporation or a subsidiary:

- 1 A shareholder who is a Minister ceases to be eligible to hold shares in the company on ceasing to be a Minister, and may thereafter exercise no right as a shareholder (except to transfer his or her shares as directed by the Chief Minister).
- 3 All decisions relating to the operation of a company are to be made by or under the authority of the directors in accordance with the statement of corporate intent of the company or, if the company is a subsidiary, of the Territory owned corporation that is the ultimate holding company.
- 4 The company, its directors and its voting shareholders shall comply with the *Territory Owned Corporations Act 1990*.
- 5 Where—
 - (a) an appointment referred to in the *Territory Owned Corporations Act 1990*, section 12 (3) is made; and
 - (b) the voting shareholders have not complied with the *Territory Owned Corporations Act 1990*, section 12 (2);the director appointed holds office—
 - (c) until the expiry of a period of 90 days from the day of appointment; or

Part 3.2

- (d) until he or she ceases to hold office for any other reason;
whichever first occurs.
- 6 The directors shall declare such dividend as is agreed to between them and the voting shareholders or, failing agreement, as the voting shareholders direct in writing.
- 7 The company shall ensure that the constitutions of its subsidiaries at all times contain provisions to the effect of those required by this schedule.
- 8 The company shall, to the maximum extent practicable, ensure that every subsidiary complies with the constitution of the subsidiary and with the requirements of the *Territory Owned Corporations Act 1990*.

Part 3.2

Provisions to the effect of the following provisions are to be included in the constitution of a company that is a Territory owned corporation:

- 1 The issued capital of a company shall consist of 2 shares that entitle the holders to vote at a general meeting and such other shares as the company may issue.
- 2 The company may issue a non-voting share or a right relating to a non-voting share only if the Treasurer has agreed in writing to the issue.
- 3 Only a Minister may hold a voting share in the capital of the company.
- 4 The directors of the company are to be appointed by the voting shareholders.
- 5 Only the voting shareholders may vote at a general meeting of the company.
- 6 The quorum at a general meeting shall consist of 2 voting shareholders present in person or by proxy.

- 7 The company must register a transfer of a voting share or a right relating to a voting share that is signed by the Chief Minister on behalf of the transferor and is accompanied by a declaration by the Chief Minister that the signature of the holder of the share or right cannot readily be obtained.
- 8 The company must register a transfer of a non-voting share or a right relating to a non-voting share that is signed by the Treasurer on behalf of the transferor and is accompanied by a declaration by the Treasurer that the signature of the holder of the share or right cannot readily be obtained.
- 9 The company may only register a transfer of a share or a right if the transfer has been made under a direction under the *Territory Owned Corporations Act 1990*, section 13 or under a provision required to be included in the constitution of the company by clause 7 or 8.

Part 3.3

Provisions to the effect of the following provisions are to be included in the constitution of a company that is a subsidiary:

- 1 A person shall not be appointed as director unless the voting shareholders consent to the appointment.
- 2 Shares in the company may not be issued or transferred unless the voting shareholders have consented in writing.

Schedule 4 Modifications in relation to ACTEW Corporation Limited

(see s 4)

1 Definitions for sch 4

In this schedule:

authority means the former Australian Capital Territory Electricity and Water Authority established by the *Electricity and Water Act 1988*.

company means ACTEW Corporation Limited.

2 Substitution of s 7 Section 7

substitute

7 Principal objectives of company

- (1) The principal objectives of the company are to—
 - (a) operate at least as efficiently as any comparable business; and
 - (b) maximise the sustainable return to the Territory on its investment in the company in accordance with the performance targets contained in the latest statement of corporate intent of the company; and
 - (c) exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and
 - (d) where its activities affect the environment—conduct its operations in compliance with the principles of ecologically sustainable development.

-
- (2) For subsection (1) (d), ecologically sustainable development is to be taken to require the effective integration of economic and environmental considerations in decision-making processes and to be achievable through implementation of the following principles:
- (a) the precautionary principle, namely, that if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
 - (b) the inter-generational equity principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - (c) conservation of biological diversity and ecological integrity;
 - (d) improved valuation and pricing of environmental resources.
- (3) The principal objectives of the company are of equal importance.

3 Operation of s 14

Section 14 (1)

substitute

- (1) Subject to subsection (1A), a Territory owned corporation or a subsidiary shall not enter into a specified transaction if, as a result of the transaction, a company would or could become a partially owned subsidiary of the Territory owned corporation or subsidiary.
- (1A) Subsection (1) does not apply to the company.

4 Operation of s 16
Section 16

insert

(5) In this section:

subsidiary, in relation to a Territory owned corporation, means a body corporate that under the Corporations Act is a subsidiary of the corporation.

Schedule 5 Modifications in relation to ACTTAB Limited

(see s 4 (2))

1 Definitions for sch 5

In this schedule:

board means the former Australian Capital Territory Totalizator Administration Board established by the *Betting (Totalizator Administration) Act 1964*.

company means ACTTAB Limited.

2 Operation of s 14 Section 14 (1)

substitute

- (1) Subject to subsection (1A), a Territory owned corporation or a subsidiary shall not enter into a specified transaction if, as a result of the transaction, a company would or could become a partially owned subsidiary of the Territory owned corporation or subsidiary.

- (1A) Subsection (1) does not apply to the company.

3 Operation of s 16 Section 16

insert

- (4) In this section:

subsidiary, in relation to a Territory owned corporation, means a body corporate that under the Corporations Act is a subsidiary of the corporation.

Schedule 5 Modifications in relation to ACTTAB Limited

Clause 5

5 Exclusion of s 33A

Section 33A does not apply in relation to the company or the staff of the company.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 **Legislation history**

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

Territory Owned Corporations Act 1990 No 53

notified 21 December 1990 (Gaz 1990 No S92)
s 1, s 2 commenced 21 December 1990 (s 2 (1))
remainder commenced 1 January 1991 (s 2 (2))

as amended by

Territory Owned Corporations (Amendment) Act 1991 No 87

notified 20 December 1991 (Gaz 1991 No S152)
ss 1-3 commenced 20 December 1991 (s 2 (1))
remainder commenced 1 January 1992 (s 2 (2))

Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1

notified 1 March 1993 (Gaz 1993 No S23)
sch 1 commenced 1 March 1993

Betting (Totalizator Administration) (Amendment) Act 1993 No 36 s 20

notified 29 June 1993 (Gaz 1993 No S111)
s 1, s 2 commenced 29 June 1993 (s 2 (1))
s 20 commenced 1 July 1993 (s 2 (2) and Gaz 1993 No S111)

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)
sch 2 commenced 27 August 1993 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 77

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 77 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Electricity and Water (Corporatisation) (Consequential Amendments) Act 1995 No 7 sch

notified 28 June 1995 (Gaz 1995 No S148)
sch commenced 1 July 1995 (s 2)

Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2)

Betting (Corporatisation) (Consequential Amendments) Act 1996 No 33 sch 1

notified 1 July 1996 (Gaz 1996 No S130)
amds commenced 1 July 1996 (s 2 (1))

Territory Owned Corporations (Amendment) Act 1997 No 36

notified 1 July 1997 (Gaz 1997 No S195)
commenced 1 July 1997 (s 2)

Territory Owned Corporations (Amendment) Act (No 2) 1997 No 40

notified 1 September 1997 (Gaz 1997 No S257)
ss 1-3 commenced 1 Sept 1997 (s 2 (1))
remainder commenced 1 October 1997 (s 2 (2) and Gaz 1997 No S341)

Territory Owned Corporations (Amendment) Act (No 3) 1997 No 73

notified 25 November 1997 (Gaz 1997 No S360)
commenced 25 November 1997 (s 2)

Territory Owned Corporations (Amendment) Act (No 4) 1997 No 118

notified 24 December 1997 (Gaz 1997 No S420)
commenced 24 December 1997 (s 2)

Territory Owned Corporations (Amendment) Act 1998 No 20

notified 10 July 1998 (Gaz 1998 No S190)
commenced 10 July 1998 (s 2)

Territory Owned Corporations (Amendment) Act 1999 No 10

notified 23 March 1999 (Gaz 1999 No S14)
ss 1-3 commenced 23 March 1999 (s 2 (1))
remainder commenced 23 June 1999 (s 2 (2))

Territory Owned Corporations Amendment Act (No 2) 1999 No 72

notified 15 December 1999 (Gaz 1999 No S50)
ss 1-3 commenced 15 December 1999 (s 2 (1))
remainder commenced 5 January 2000 (s 2 (2) and Gaz 2000 No S1)

Endnotes

4 Amendment history

Territory Owned Corporations Amendment Act 2000 No 42

notified 4 September 2000 (Gaz 2000 No S48)

commenced 4 September 2000 (s 2)

Statute Law Amendment Act 2000 No 80

notified 21 December 2000 (Gaz 2000 No S69)

commenced 21 December 2000 (s 2 (1))

Legislation (Consequential Amendments) Act 2001 No 44 pt 380

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 380 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Taxation (Government Business Enterprises) Act 2003 A2003-12 sch 1 pt 1.10

notified LR 27 March 2003

s 1, s 2 taken to have commenced 1 July 2002 (LA s 75 (2))

sch 1 pt 1.10 commenced 28 March 2003 (s 2 (2))

4 Amendment history

Commencement

s 2 om R6 LRA

Definitions for Act

s 3 am 1993 No 1; 1995 No 7; 1996 No 26; 1999 No 72 s 4

Application of Act

s 4 sub 1995 No 7
am 1996 No 33

Application to the Crown

s 5 om 1993 No 44

Notification to Assembly

s 9 am 1999 No 72 sch

Legal obligations

s 10 am 1999 No 72 sch

Constitution

s 11 sub 1999 No 72 s 5

Directors

s 12 am 1999 No 10 s 4; 1999 No 72 sch

Shares in corporations

s 13 am 1998 No 20
sub 1999 No 72 s 6

Acquisition of subsidiaries

s 14 am 1993 No 1; 1995 No 7

Acquisition and disposal of subsidiaries and undertakings

s 16 am 1998 No 20

Directions to corporations

s 17 am 1999 No 72 sch

Preparation of statement of corporate intent

s 19 am 1999 No 72 s 7

Annual report

s 22 am 1993 No 1; 1995 No 7; 1997 No 118

Borrowing from Territory

s 24 am 1997 No 73

Territory Taxes

pt 5 hdg sub A2003-12 amdt 1.13

Definitions for pt 5

s 28A ins 1997 No 36
om A2003-12 amdt 1.14

Territory taxes

s 29 am A2003-12 amdt 1.15, amdt 1.16; ss renum R8 LA (see
A2003-12 amdt 1.17)

Treasurer's instructions

s 30 sub 1997 No 36
om A2003-12 amdt 1.18

Compliance with Treasurer's instructions

s 30A ins 1997 No 36
om A2003-12 amdt 1.18

Income tax equivalents

s 30B ins 1997 No 36
om A2003-12 amdt 1.18

Wholesale sales tax equivalents

s 30C ins 1997 No 36
om A2003-12 amdt 1.18

Payment of tax equivalents

s 30D ins 1997 No 36
om A2003-12 amdt 1.18

Endnotes

4 Amendment history

Penalty for late payment

s 30E ins 1997 No 36
om A2003-12 amdt 1.18

Variation of tax equivalents

s 30F ins 1997 No 36
om A2003-12 amdt 1.18

Remission, refund and waivers

s 30G ins 1997 No 36
om A2003-12 amdt 1.18

Rulings

s 30H ins 1997 No 36
om A2003-12 amdt 1.18

Objections

s 30J ins 1997 No 36
om A2003-12 amdt 1.18

Appeals

s 30K ins 1997 No 36
om A2003-12 amdt 1.18

Effect of pending objection or review

s 30L ins 1997 No 36
om A2003-12 amdt 1.18

Profits available for payment of dividends

s 32 am 1993 No 1

Benefits retained and preserved

s 33A ins 1991 No 87
am 1994 No 38

Affirmative action

s 33B ins 1991 No 87

Regulation-making power

s 34 sub 2001 No 44 amdt 1.4016

Territory owned corporations

sch 1 am 1991 No 87; 1993 No 36; 1995 No 7; 1996 No 33; 1997 No 40; 2000 No 42 s 4

Provisions to be included in constitution of Territory owned corporation or subsidiary

sch 2 hdg am 1999 No 72 sch
sch 2 am 1999 No 72 sch

Further provisions to be included in constitution of Territory owned corporation or subsidiary

sch 3 hdg am 1999 No 72 sch
 sch 3 am 1999 No 10 s 5; 1999 No 72 s 8, sch; R7 LA

Modifications in relation to ACTEW Corporation Limited

sch 4 ins 1995 No 7
 am 2000 No 80 amdt 3.25; A2003-12 amdt 1.19

Modifications in relation to ACTTAB Limited

sch 5 ins 1996 No 33
 am A2003-12 amdt 1.20

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 87	29 February 1992
2	Act 1993 No 44	31 August 1993
3	Act 1996 No 33	30 September 1996
4	Act 1997 No 36	1 July 1997
5	Act 1998 No 20	10 July 1998
6	Act 2000 No 42	4 September 2000
7	Act 2001 No 44	12 December 2001