



AUSTRALIAN CAPITAL TERRITORY

Gungahlin Development Authority Act 1996

No. 38 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Gungahlin Development Authority Act 1996

No. 38 of 1996

An Act to provide for the development of the Gungahlin Central Area

[Notified in ACT Gazette S160: 10 July 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Gungahlin Development Authority Act 1996*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. In this Act, unless the contrary intention appears—

“Authority” means the Gungahlin Development Authority established by section 5;

“Development Area” means the area from time to time declared as the Gungahlin Development Area under section 4;

“Gungahlin Central Area” means the area referred to as the Gungahlin Town Centre and Central Area in the Territory Plan;

“Territory Plan” means the Territory Plan as in effect from time to time under the *Land (Planning and Environment) Act 1991*.

Development Area

4. The Minister may, by instrument published in the *Gazette*—

- (a) declare an area specified in the instrument, being an area that is within the Gungahlin Central Area, as the Gungahlin Development Area; and
- (b) from time to time vary the area so declared.

PART II—GUNGAHLIN DEVELOPMENT AUTHORITY

Division 1—Establishment, functions and powers

Establishment

5. (1) There is hereby established an authority by the name of the Gungahlin Development Authority.

(2) The Authority—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) The common seal of the Authority shall be kept in such custody as the Authority directs and shall not be used except as authorised by the Authority.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

Principal object of the Authority

6. The principal object of the Authority is to ensure that the Gungahlin Central Area is developed in accordance with the principles and policies for that area set out in the Territory Plan in order to provide for the social and economic needs of the community.

Functions

7. (1) The functions of the Authority are—

- (a) to be an agency for the provision, development and management, on behalf of the Territory, of land in the Gungahlin Central Area;
- (b) to undertake, promote and co-ordinate the development of land in the Gungahlin Central Area;
- (c) to exercise such functions on behalf of the Executive as it is authorised to exercise by a law of the Territory or by an instrument;
- (d) where appropriate for the purpose of discharging its other functions—to construct buildings, structures and facilities (including community facilities) and to manage and maintain them, or to participate in such construction, management or maintenance; and
- (e) to act as a concurring authority for controlled activities for the purposes of the *Land (Planning and Environment) Act 1991* and as an advisory body in relation to implementation plans for the purposes of the *Buildings (Design and Siting) Act 1964*.

(2) The Authority shall perform its functions—

- (a) in a manner that is consistent with the social and economic needs of the Territory;
- (b) in accordance with prudent commercial principles;
- (c) in consultation with residents of the Territory and, in particular, of Gungahlin;
- (d) in a manner that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates; and
- (e) where its activities affect the environment—in compliance with the principles of ecologically sustainable development.

(3) For the purposes of paragraph (2) (e), 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.

Powers

8. (1) The Authority has power to do all things necessary and convenient to be done in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1) or of any other power conferred on the Authority by this or any other Act, the Authority may—

- (a) in accordance with any authorisation of the Executive, grant leases of land on its behalf;
- (b) hold leases of, or any other interest in, land;
- (c) construct roads, lanes, footpaths and passageways;
- (d) carry out any works and operations deemed necessary for the purpose of rendering land suitable for professional, commercial, industrial, residential or community purposes;
- (e) occupy and use any land or building;
- (f) erect, alter, repair or renovate buildings;
- (g) maintain and manage land, buildings, structures, works or other property;
- (h) make charges for work done or services rendered;
- (i) form, or participate in the formation of, companies, enter into partnerships or participate in joint ventures;
- (j) enter into any other contract or arrangement with any person for the doing of anything that the Authority is authorised to do under this or any other Act;
- (k) subscribe for or purchase shares in, or debentures or other securities of, companies;

- (l) act as agent for other persons; and
- (m) appoint agents or attorneys.

(3) The power of the Authority to grant leases referred to in paragraph (2) (a) shall be read as including the power to grant leases to itself.

Limitations on formation of companies etc.

9. (1) The Authority shall not, without the written approval of the Minister—

- (a) subscribe for or purchase shares in, or debentures or other securities of, a company; or
- (b) form, or participate in the formation of, a company that would, upon its formation, be a subsidiary of the Authority.

(2) Any approval under subsection (1)—

- (a) shall relate only to a particular company or proposed company; and
- (b) may be given subject to specified conditions and restrictions.

(3) Where the Authority subscribes for or purchases shares in, or debentures or other securities of, a company or participates in, forms or is interested in a company, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the subscription or purchase or the participation, formation or interest; and
- (b) cause a copy of the statement to be laid before the Legislative Assembly within 15 sitting days after—
 - (i) subject to subparagraph (ii), the subscription or purchase or the participation, formation or interest takes place; or
 - (ii) if the Minister is of the opinion that the disclosure of the subscription or purchase or the participation, formation or interest would adversely affect the commercial interests of the Authority, the Minister ceases to be of that opinion.

(4) Before laying a copy of a statement before the Legislative Assembly, the 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) If the Authority holds a controlling interest in a company, it shall endeavour to ensure that—

- (a) the Auditor-General is appointed auditor for the company; and

- (b) that the company does not do anything that the Authority itself is not empowered to do.

(6) Without limiting the generality of paragraph (5) (b), the Authority shall endeavour to ensure that a company in which it holds a controlling interest does not—

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

except—

- (c) with the written approval of the Minister for the time being administering the *Financial Management Act 1996*; and
- (d) on terms and conditions that are specified in, or consistent with, the approval.

(7) Subsection (6) applies to a borrowing or raising of money whether the money is borrowed or raised by dealing in securities or otherwise, and whether or not the money is borrowed or raised, in whole or in part, in a currency other than Australian currency.

(8) An approval under subsection (6) may be given in relation to a particular transaction or class of transactions.

(9) For the purposes of subsection (6)—

- (a) the issue by a company of an instrument acknowledging a debt in consideration of the payment or deposit of money or of the provision of credit; or
- (b) the obtaining of credit by the company;

shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by that company.

(10) Paragraph 6 (b) does not apply to a raising of money where that money is raised by way of bona fide payment for services rendered.

Limitations on participation in joint ventures

10. (1) The Authority shall not, without the written approval of the Minister, participate in a joint venture.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to a particular proposed joint venture; and
- (b) may be given subject to specified conditions and restrictions.

(3) Where the Authority enters into an agreement for a joint venture, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the joint venture; and
- (b) cause a copy of the statement to be laid before the Legislative Assembly within 15 sitting days after—
 - (i) subject to subparagraph (ii), the agreement is entered into; or
 - (ii) if the Minister is of the opinion that the disclosure of the joint venture would adversely affect the commercial interests of the Authority, the Minister ceases to be of that opinion.

(4) Before laying a copy of a statement before the Legislative Assembly, the 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) Where the Authority is able to control the things done by a joint venture in which it is a participant, it shall endeavour to ensure that—

- (a) the Auditor-General is appointed auditor for the joint venture; and
- (b) the joint venture does not do anything that the Authority itself is not empowered to do.

Ministerial directions

11. (1) The Minister may, by instrument, give directions to the Authority in relation to the performance of its functions.

(2) The Authority shall comply with a direction given under subsection (1).

(3) The Minister shall cause particulars of any direction under subsection (1) to be tabled in the Legislative Assembly within 5 sitting days of its being given.

Compliance with Territory Plan

12. Nothing in this Act shall be taken to permit the Authority to do any act, or authorise the doing of any act, that is inconsistent with the Territory Plan.

Division 2—Constitution and meetings

Interpretation

13. In this Division, unless the contrary intention appears—

“member” means—

- (a) a person referred to in paragraph 14 (1) (a) to (j); or
- (b) where a person has been appointed to act as a member under section 20—such a person.

Membership

14. (1) The Authority shall consist of—

- (a) a resident of Gungahlin who is familiar with the diversity of interests of residents of Gungahlin, being a person nominated by the Gungahlin Community Council Incorporated;
- (b) a resident of Gungahlin who is familiar with the diversity of interests of residents of the Territory;
- (c) a person with expertise in the property development industry who has no connection with, or any direct or indirect pecuniary interest in, any land, or any activity carried on, in the Gungahlin Central Area;
- (d) a person with expertise in the retail trade industry who has no connection with, or any direct or indirect pecuniary interest in, any land, or any activity carried on, in the Gungahlin Central Area;
- (e) a person with expertise in the finance industry who has no connection with, or any direct or indirect pecuniary interest in, any land, or any activity carried on, in the Gungahlin Central Area;
- (f) a person with expertise in urban planning and design;
- (g) a person with expertise in environment protection;
- (h) a person with expertise in the provision of community facilities;
- (i) a person with expertise relevant to the management and operations of the Authority;
- (j) 2 persons who are performing the duties of an Executive Office in the Australian Capital Territory Public Service; and
- (k) the Chief Executive Officer for the Authority.

(2) A member shall be appointed by the Minister by instrument.

(3) The performance of the functions or the exercise of the powers of the Authority is not affected by reason only of there being a vacancy or vacancies in the membership of the Authority.

Term of office

15. (1) Subject to this Division, a member holds office for the period, not exceeding 3 years, specified in the instrument of appointment.

(2) A member is eligible for re-appointment.

(3) A member appointed under paragraph 14 (1) (j) ceases to be a member if he or she ceases to perform the duties of an Executive Office in the Australian Capital Territory Public Service.

Chairperson and Deputy Chairperson

16. The Minister shall appoint from the members—

(a) a Chairperson; and

(b) a Deputy Chairperson;

of the Authority.

Leave of absence

17. The Minister may grant leave of absence to a member on such terms and conditions as to remuneration and otherwise as the Minister determines.

Disclosure of interests

18. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Authority.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

(a) be present during any deliberation of the Authority with respect to the matter; or

(b) take part in any decision of the Authority with respect to that matter.

(3) In this section—

“member” includes the Chief Executive Officer.

Resignation

19. A member may resign his or her office by notice in writing signed by the member and delivered to the Minister.

Acting members

20. (1) Where a member—

(a) has been granted leave of absence; or

(b) has resigned;

the Minister may, by instrument, appoint a person to act in place of that member while the member is on leave or until another member is appointed under section 14, as the case requires.

(2) A person shall not be appointed under subsection (1) unless the person would be eligible for appointment under section 14 in place of the member who is absent or has resigned.

(3) Anything done by the Authority while its membership includes a person purporting to act under this section is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Termination of appointment

21. (1) The Minister may terminate the appointment of a member or acting member because of the misbehaviour or physical or mental incapacity of the member or acting member.

(2) If a member or acting member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) is absent, except on leave granted under section 17, for 3 consecutive meetings; or
- (c) without reasonable excuse contravenes section 18;

the Minister shall terminate the appointment of that member or acting member.

Meetings

22. The Chairperson, or if he or she is unable to do so, the Deputy Chairperson, shall convene such Authority meetings—

- (a) as the Chairperson or the Deputy Chairperson, as the case requires, considers necessary for the efficient performance of its functions; or
- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

Procedure at meetings

23. (1) The Chairperson shall preside at all the Board meetings at which he or she is present.

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Board shall keep minutes of its proceedings.

(8) In subsection (5)—

“member” includes the Chief Executive Officer.

Quorum

24. (1) At a meeting of the Board, a majority of the members of the Board constitutes a quorum.

(2) In subsection (1)—

“member” includes the Chief Executive Officer.

PART III—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1—Chief Executive Officer

Appointment

25. (1) The Minister shall, by instrument, appoint a person to be Chief Executive Officer for the Authority.

(2) The Chief Executive Officer holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(3) The Chief Executive Officer holds office on such terms and conditions (in respect of matters not determined under the *Remuneration Tribunal Act 1995*) as are determined by the Minister in writing.

(4) A retiring Chief Executive Officer is eligible for re-appointment.

Leave of absence

26. The Authority may, in writing, grant leave of absence to the Chief Executive Officer.

Disclosure of interests

27. (1) A person appointed to be the Chief Executive Officer or to act as Chief Executive Officer shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

(2) If the Chief Executive Officer or a person acting as Chief Executive Officer has or acquires a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Executive Officer shall give written notice to the Minister of that interest.

Resignation

28. The Chief Executive Officer may resign office by notice in writing signed by him or her and delivered to the Minister.

Termination of appointment

29. (1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Executive Officer if he or she—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 27; or
- (c) is absent from duty, except on leave of absence granted by the Authority, for 14 consecutive days or for 28 days in any period of 1 year.

Acting Chief Executive Officer

30. (1) The Minister may, after consultation with the Authority, by instrument appoint a suitably qualified and experienced person to act as Chief Executive Officer—

- (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

but a person appointed to act during a vacancy shall not continue to do so for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as Chief Executive Officer is not invalid because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Division 2—Staff and consultants

Staff

31. (1) The Authority may employ as members of its staff such persons as it considers necessary to enable it to properly perform its functions.

(2) The Authority may make reciprocal arrangements with other public authorities for the purpose of facilitating the transfer of staff between the Authority and any of those public authorities.

(3) In this section, a reference to a public authority (other than the Authority) shall be read as a reference to—

- (a) the Territory;
- (b) the Commonwealth, a State or another Territory; or
- (c) an authority or instrumentality of the Territory, the Commonwealth, a State or another Territory.

Consultants

32. (1) The Authority may engage persons having suitable qualifications and experience as consultants to the Authority.

(2) Nothing in subsection (1) shall be read as conferring on the Authority a power to enter into a contract of employment.

PART IV—FINANCIAL MANAGEMENT

Proceeds of grant of leases

33. (1) Any consideration received by the Authority for the grant of a lease of land shall be taken to be, for the purposes of this Act, income of the Authority.

(2) In subsection (1) the reference to the grant of a lease of land includes the grant, under authorisation of the Executive, of a lease (including a lease to the Authority itself) of land that, immediately before the grant, was unleased.

Payment of funds to the Territory

34. (1) The Treasurer may, from time to time, by instrument in writing, direct the Authority to pay to the Territory—

- (a) a specified amount; or
- (b) an amount calculated in a specified manner;

in such manner, at such time or times and on such terms and conditions as the Treasurer specifies by that or another instrument.

(2) In giving a direction under subsection (1), the Treasurer shall have regard to—

- (a) the assets and liabilities of the Authority;
- (b) its income and expenditure;
- (c) the ability of the Authority to discharge its functions; and
- (d) the requirement that the Territory obtain a reasonable return from the development and disposal of unleased land.

(3) For the purpose of making calculations for the purposes of this section, land within the Development Area shall be taken to be an asset of the Authority.

(4) Subject to subsection (5), the Authority shall, as soon as practicable after the end of each financial year, pay to the Territory an amount equal to the amount of funds that it holds that are not expected to be required for the discharge of its functions.

(5) The Treasurer may, by instrument in writing, direct that the Authority pay a lesser amount than the amount referred to in subsection (4).

(6) The Authority shall comply with a direction under this section.

Commonwealth tax equivalents

35. (1) In this section—

“Commissioner” means the Commissioner for Australian Capital Territory Revenue;

“equivalent law”, subject to subsection (17), means a law of the Commonwealth that deals with taxation or imposes a tax, being a law that does not apply to the Authority by reason only that the Authority is an instrumentality of the Territory;

“tax” includes a duty, fee or charge.

(2) Subject to this section, the Authority shall pay to the Territory an amount (in this section referred to as a “Commonwealth tax equivalent”) equivalent to the tax that it would be liable to pay under an equivalent law if the Authority were not an instrumentality of the Territory.

(3) The Commissioner may, at any time, make an assessment of the Commonwealth tax equivalent payable by the Authority.

(4) The Commissioner may, at any time, amend an assessment by making such alterations or additions as he or she thinks necessary, notwithstanding that the Commonwealth tax equivalent may have been paid in respect of the assessment.

(5) An amended assessment is an assessment for the purposes of this or any other Act.

(6) The Commissioner shall, within 14 days after making an assessment, give a copy of the assessment to the Authority.

(7) A document purporting to be a copy of an assessment is evidence—

- (a) of the due making of the assessment; and
- (b) except in proceedings by way of review of the assessment or the process of making it—of the Commonwealth tax equivalent payable by the Authority.

(8) Subject to this section, payment of a Commonwealth tax equivalent shall be made on such terms as the Commissioner determines.

(9) The Authority, if dissatisfied with an assessment or determination of the Commissioner, may request the Commissioner to refer it to the Treasurer.

(10) The Treasurer may, in writing, vary an assessment or determination that has been referred to him or her under subsection (9).

(11) An assessment or determination varied by the Treasurer has effect as varied.

(12) For the purposes of performing a function under this section the Commissioner has all the powers, and may exercise any discretions, that, by any law of the Commonwealth are vested in the authority or officer administering the equivalent law.

(13) The Authority shall furnish to the Commissioner all the information, returns or documents that, if it were not an instrumentality of the Territory, it would be obliged under a law of the Commonwealth to furnish to the authority or officer administering the equivalent law.

(14) The information, returns and documents referred to in subsection (13) shall be furnished in such a manner and within such times as they would be required to be furnished under the law of the Commonwealth.

(15) The Treasurer may by instrument declare that a provision of a law of the Commonwealth is not to be an equivalent law in respect of the Authority.

(16) A declaration under subsection (15) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(17) A provision that is the subject of a declaration under subsection (15) is not an equivalent law for the purposes of this section.

Copy of statement of intent

36. (1) The Authority shall give to the Minister a copy of the statement of intent that it is required to give to the Treasurer under the *Financial Management Act 1996*.

(2) The Minister shall lay the copy of a statement of intent before the Legislative Assembly within 5 sitting days after receiving it.

(3) Before laying a copy of a statement before the Legislative Assembly, the 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.

PART V—MISCELLANEOUS

Delegations and authorisations

37. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by instrument under its common seal, delegate to the Chief Executive Officer any of its powers under this Act other than this power of delegation or the power to authorise the exercise of a power of the Authority referred to in subsection (2).

(2) The Authority may, by instrument under its common seal, authorise a person to act on its behalf in the exercise of a power under this Act or any other Act, other than this power to authorise the exercise of a power of the Authority or the power of delegation referred to in subsection (1).

Information to be included in annual report

38. A report presented by the Authority, or information provided by the Authority, under section 8 of the *Annual Reports (Government Agencies) Act 1995* shall include—

- (a) particulars of any direction under section 11 given by the Minister during the period to which the report or information relates; and
- (b) a statement by the Authority indicating how, during the period to which the report or information relates, effect has been given to all directions under section 11 received by it, whether they were received during that period or during an earlier period.

Quarterly reports

39. (1) The Authority shall, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the Authority during that quarter.

(2) In subsection (1)—

“quarter” means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 September in each year.

Review of Act

40. (1) Unless this Act is sooner repealed, the Minister shall cause to be carried out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of the period of 5 years commencing on the day when this section commences and shall ensure that, in the course of that review, regard is had to—

- (a) the effectiveness of the operations of the Authority;
- (b) the need for the continuation of the existence of the Authority;
- (c) the need for the continuation of this Act; and
- (d) any other matter that appears to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as practicable, lay it before the Assembly.

Regulations

41. The Executive may make regulations for the purposes of this Act.

[Presentation speech made in Assembly on 18 June 1996]