



Australian Capital Territory

Territory Owned Corporations Amendment Act 2004

A2004-53

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2003 216B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Territory Owned Corporations Amendment Act 2004

A2004-53

An Act to amend the *Territory Owned Corporations Act 1990*, and for other purposes

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

2003 216B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Territory Owned Corporations Amendment Act 2004*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Territory Owned Corporations Act 1990*.

Note This Act also amends the *Financial Management Act 1996* (see sch 1).

4 New section 2

insert

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*department*—see *Financial Management Act 1996*, dictionary.’ means that the term ‘department’ is defined in that dictionary.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 **Definitions for Act**
Section 3 (1), definitions of *borrowing, group, subsidiary*
and *voting shareholder*

omit

6 **Section 3 (1), definitions (as amended)**

relocate to dictionary

7 **Section 3, remainder**

substitute

3 **Notes**

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

8 **Section 7**

substitute

7 **Main objectives of corporations**

- (1) The main objectives of a Territory owned corporation or subsidiary are—
- (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 or subsidiary in accordance with the performance targets in the latest statement of corporate intent of the corporation; and
 - (c) to show a sense of social responsibility by having regard to the interests of the community in which it operates, and by trying to accommodate or encourage those interests; and

- (d) if its activities affect the environment—to operate in accordance with the object of ecologically sustainable development.
- (2) The main objectives of the company are of equal importance.
- (3) In this section:

ecologically sustainable development means the effective integration of environmental and economic considerations in decision-making processes achievable through implementation of the following principles:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

inter-generational equity principle means 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.

precautionary principle means 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.

9 Section 8

substitute

8 Status of Territory owned corporations and subsidiaries

- (1) A Territory owned corporation or subsidiary is not, only because of its status as a Territory owned corporation or subsidiary—
 - (a) the Territory; or

- (b) a representative of the Territory; or
 - (c) a government entity under the Legislation Act, section 121 (Binding effect of Acts).
- (2) Accordingly, a Territory owned corporation or subsidiary is not, only because of its status as a Territory owned corporation or subsidiary—
- (a) entitled to any immunity or privilege of the Territory; or
 - (b) exempt from a tax, duty, fee or charge payable under an Act.
- (3) Also, the Territory is liable for the debts and other liabilities of a Territory owned corporation or subsidiary only if—
- (a) this or another Act provides that the Territory is liable; or
 - (b) the Territory agrees to be liable.
- (4) This section has effect despite the Legislation Act, section 121.

10 Section 15

substitute

15 Provision of information

- (1) A Territory owned corporation or subsidiary must, if asked in writing by the voting shareholders, prepare and give to the voting shareholders periodical financial statements, performance reports and any other information about the corporation or subsidiary asked for.
- (2) The request may state the format and contents of the information asked for, and the period for which it is to be prepared and given.
- (3) A Territory owned corporation or subsidiary must comply with the request within 1 month after the day it receives the request, unless the voting shareholders extend the time for compliance.

11 Acquisition and disposal of subsidiaries and undertakings
New section 16 (1) (aa)

insert

- (aa) acquire an undertaking that could reasonably be expected to become a main undertaking; or

12 New section 16 (1) (ca)

insert

- (ca) enter into, or make a significant change to the nature or extent of its interest in, a partnership, trust or unincorporated joint venture or similar arrangement; or

13 Section 16 (1)

renumber paragraphs when Act next republished under Legislation Act

14 Section 16 (3)

omit

subsection (1) (a), (b) or (c)

substitute

subsection (1) (a), (aa), (b), (c) or (ca)

15 New section 16 (5) and (6)

insert

- (5) For this section an undertaking of a Territory owned corporation or subsidiary is a **main undertaking** for the corporation or subsidiary if—
- (a) it is a main undertaking when interpreted in accordance with the accounting standards relating to materiality practised in

- Australia at the time the decision about whether it is a main undertaking is made; or
- (b) a document published by the corporation or subsidiary identifies it as a main undertaking (however described); or
 - (c) a memorandum of understanding between the corporation or subsidiary and the voting shareholders identifies it as a main undertaking (however described); or
 - (d) it is declared under the regulations to be a main undertaking.
- (6) For this section, an asset, a part of the undertakings or assets, or a change to the nature or extent of an interest of a Territory owned corporation or subsidiary is **significant** for the corporation or subsidiary if—
- (a) it is significant when interpreted in accordance with the accounting standards relating to materiality practised in Australia at the time the decision about whether it is significant is made; or
 - (b) a document published by the corporation or subsidiary identifies it as significant (however described); or
 - (c) a memorandum of understanding between the corporation or subsidiary and the voting shareholders identifies it as significant (however described); or
 - (d) it is declared under the regulations to be significant.

16 **New section 16A**

insert

16A **Obligation to tell shareholders about significant events**

- (1) This section applies if the directors of a Territory owned corporation or subsidiary become aware of any significant event that affects, or seems likely to affect—

- (a) the value of the corporation or subsidiary; or
- (b) a significant part of the assets of the corporation or subsidiary;
or
- (c) the performance of the corporation or subsidiary as a whole; or
- (d) the carrying out of a significant activity of the corporation or subsidiary.

Examples of significant events

- 1 new ventures
- 2 significant changes to existing activities

Example of significant activities

activities involving significant risk or likely to attract adverse publicity

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The directors of the corporation or subsidiary must, as soon as practicable after becoming aware of the event, tell the voting shareholders about the event.
- (3) For this section, an event is *significant* for the Territory owned corporation or subsidiary if—
 - (a) it is significant when interpreted in accordance with the accounting standards relating to materiality ordinarily used in Australia at the time the decision about whether it is significant is made; or
 - (b) a document published by the corporation or subsidiary identifies it as significant (however described); or
 - (c) a memorandum of understanding between the corporation or subsidiary and the voting shareholders identifies it as significant (however described); or
 - (c) it is declared under the regulations to be significant.

- (4) In this section:
event includes an activity.

17 New section 17A

insert

17A Application of government policies

- (1) After consulting with the directors of a Territory owned corporation or subsidiary, the voting shareholders may tell the corporation or subsidiary, in writing, the general government policies (the *applicable policies*) that are to apply to the corporation or subsidiary.
- (2) The directors of the Territory owned corporation or subsidiary must ensure that the applicable policies are, as far as practicable, complied with by the corporation or subsidiary.
- (3) A notice under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

18 New section 18A

insert

18A Audit committee

- (1) The directors of a Territory owned corporation must establish an audit committee.
- (2) An executive director or senior manager of the corporation must not be a member of the audit committee.
- (3) The audit committee has the following functions:
 - (a) helping the corporation and its directors comply with relevant legislation;

- (b) providing a forum for communication between the directors and senior managers of the corporation and the auditor-general;
- (c) overseeing risk management;
- (d) reviewing accounting and reporting structures;
- (e) monitoring internal controls and performance;
- (f) undertaking reviews or investigations at the request of the directors.

**19 Borrowing otherwise than from Territory
Section 25 (1), new note**

insert

Note The Treasurer may approve limits for more than 1 financial year in a single approval (see Legislation Act, s 49 (Single instrument may exercise several powers or satisfy several requirements)).

20 New section 25 (5)

insert

- (5) The Treasurer must not delegate the Treasurer's function under subsection (1).

21 New section 28A

in part 4, insert

28A Guarantees by corporation

- (1) A Territory owned corporation or subsidiary must not give a guarantee for the payment of money or the performance of an obligation without the Treasurer's prior written approval.
- (2) An approval may be subject to conditions stated in the approval.

22 **New section 33C***insert***33C** **Investment of surplus funds**

- (1) A Territory owned corporation or subsidiary may invest any money that is not immediately needed for the purposes of the corporation or subsidiary—
 - (a) on deposit with an authorised deposit-taking institution; or
 - (b) in Territory, State or Commonwealth securities; or
 - (c) by the Treasurer, for the Territory owned corporation, in an investment mentioned in the *Financial Management Act 1996*, section 38 (1) (a) to (e); or
 - (d) in any other investment approved by the directors of the corporation or subsidiary.
- (2) Transfers of money for investment, including transfers between the Territory banking account and the banking account of the Territory owned corporation or subsidiary to facilitate investment, may be made without appropriation.
- (3) Interest received from the investment of money under this section must be paid to the banking account of the Territory owned corporation or subsidiary.
- (4) However, if the investment is made or managed for the Territory owned corporation or subsidiary by a department, the department may deduct from interest received by the department for the investment—
 - (a) a fee for making or managing the investment; and
 - (b) expenses reasonably incurred by the department in making or managing the investment.

- (5) Interest that is to be paid to the Territory owned corporation or subsidiary may be paid direct to the corporation or subsidiary or through the Territory banking account.
- (6) If interest to be paid to the Territory owned corporation or subsidiary is paid into the Territory banking account, it may be transferred to the corporation or subsidiary without appropriation.
- (7) This section does not apply to money held on trust by the Territory owned corporation or subsidiary.

**23 Modifications in relation to ACTEW Corporation Limited
Schedule 4, clause 1**

substitute

1 Meaning of *company*

In this schedule:

company means ACTEW Corporation Limited.

24 Schedule 4, clause 2

omit

25 Schedule 4, clause 4

omit

(5)

insert

(7)

**26 Modifications in relation to ACTTAB Limited
Schedule 5, clause 1**

substitute

1 Meaning of *company*

In this schedule:

company means ACTTAB Limited.

27 Schedule 5, clause 3

omit

(4)

insert

(7)

28 New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Chief Minister
- Corporations Act
- financial year
- function
- Legislation Act
- Legislative Assembly
- liability
- the Territory

- Treasurer
- under.

borrowing, in relation to a Territory owned corporation or subsidiary, includes raising money or obtaining credit, whether by entering into a financing lease, dealing with 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.

Example

If a Territory owned corporation or subsidiary obtains credit by entering into a financing lease as part of its day-to-day operations, the transaction is not borrowing.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

department—see the *Financial Management Act 1996*, dictionary.

financing lease means a lease under which, in effect, the lessor transfers to the lessee substantially all the risks and benefits incident to ownership of the leased asset (whether or not ownership is, or is to be, transferred).

group means a Territory owned corporation and any subsidiary.

subsidiary means a corporation—

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

voting shareholder means—

- (a) in relation to a Territory owned corporation—the holder of a share in the corporation that gives the right to vote at a general meeting; and

- (b) in relation to a group—a voting shareholder of the Territory owned corporation that is the holding company of the group; and
- (c) in relation to a subsidiary—a voting shareholder of the Territory owned corporation that is the ultimate holding company of the subsidiary.

voting shareholders means the voting shareholders acting in concert.

Schedule 1 Financial Management Act 1996—consequential amendments

(see s 3)

[1.1] Dictionary, definition of *public money*, paragraph (b)

substitute

- (b) money received by a Territory owned corporation or subsidiary of a Territory owned corporation; or
- (ba) money received by the Territory from a Territory owned corporation or subsidiary of a Territory owned corporation for investment for the corporation or subsidiary; or

[1.2] Dictionary, definition of *public money*

renumber paragraphs when Act next republished under Legislation Act

[1.3] Dictionary, new definition of *subsidiary*

insert

subsidiary—see the *Territory Owned Corporations Act 1990*, dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 1 July 2004.

2 Notification

Notified under the Legislation Act on 16 August 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Territory Owned Corporations Amendment Bill 2004, which was passed by the Legislative Assembly on 5 August 2004.

Clerk of the Legislative Assembly

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