

AUSTRALIAN CAPITAL TERRITORY

ACTION AUTHORITY ACT 2001

DECLARATION UNDER SECTION 36

TRANSFERRED EMPLOYEES

INSTRUMENT No. 3 OF 2002

EXPLANATORY MEMORANDUM

1. The ACTION Authority Act 2001 provided for the establishment of ACTION (the ACT Bus Service) as a statutory authority.
2. The attached instrument provides for the transfer of existing ACTION staff to the ACTION Authority from the date of the commencement of the Act on 1 January 2002. The purpose is to provide the Authority with the staff it needs to conduct its business.
3. Another instrument under Section 22, which is not required to be notified, provides them with certain rights as to employment conditions.
- Under section 36(1) of the Act, the Minister is able to declare in writing that assets, liabilities and rights of the ACT Government vest in the ACTION Authority. Legal advice is that this is the best method to formally “transfer” staff from their employment with the ACT Government to employment with the ACTION Authority. A declaration under section 36(1) is a disallowable instrument (under section 36(3) of the Act).
5. Under section 22 of the Act, the Minister is able to declare in writing that persons who were employed as public servants immediately before the commencement of the Act, and who were employed by the ACTION Authority immediately after the commencement of the Act, are regarded as “transferred employees”. Status as a “transferred employee” gives these employees the rights set out in the remainder of section 22, which are essentially continuation of employment conditions until a new industrial agreement is negotiated; and preservation of existing leave entitlements.
6. A declaration under section 22 has been made to cover all of the relevant staff. That instrument is not required to be notified.
7. The Act has been amended by the insertion of Section 36A, which ensures that employees mentioned in these instruments are to be taken as being an employee of the ACTION Authority from the commencement day of 1 January 2002.

Simon Corbell MLA
Minister for Planning