

TERRITORY OWNED CORPORATIONS (AMENDMENT) BILL (No 2) 1999

EXPLANATORY MEMORANDUM

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Treasurer
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Territory Owned Corporations (Amendment) Bill (No 2) 1999

Outline

The Act provides for certain amendments to the existing *Territory Owned Corporations Act 1990* which governs the operations and management of the Territory owned corporations.

The Act provides for the removal of the restriction on the number of non-voting shares a Territory owned corporation may issue. Responsibility for authorising the issue and subsequent transfer of non-voting shares is to rest with the Treasurer. Responsibility for the issue and subsequent transfer of voting shares is to remain with the Chief Minister.

Shares may only be held on trust for the Territory unless the Assembly authorises otherwise.

The preparation for the statement of corporate intent is no longer to be restricted to after the end of the previous financial year. The Treasurer has the discretion to direct a company to prepare a statement of corporate intent for the following financial year at any time. Statements of corporate intent will be prepared at least annually.

The *Company Law Review Act 1998* (Cwlth) changed the rules in the *Corporations Law* regarding a company's Constitution. The memorandum of association and the articles of association for companies formed prior to 1 July 1998 are now called the company's Constitution. All references to the memorandum of association or articles of association are amended to be referred to as the company's constitution.

There are no significant cost or revenue implications.

Objectives

The Act seeks to remove the capital management restrictions on Territory owned corporations by not restricting the issue of non-voting shares under a direction by the Treasurer. This will allow efficient financial management of the companies without increasing the risk of diluting the Territory's ownership and control.

The Ministers may only transfer the shares to a person to be held on trust for the Territory or to a Territory owned corporation unless authorised by the Legislative Assembly to act otherwise.

The provisions will enable the injection of additional equity capital into Territory owned corporations and will also facilitate returns of capital from Territory owned corporations to the Territory.

The timing of the preparation for the statement of corporate intent will become more flexible and permit the Treasurer to request a statement as required by the Government. The existing provisions do not allow the statement of corporate intent to be finalised before the commencement of the period to which it relates. The new arrangements will allow a greater co-ordination between the timing of the preparation of the statement of corporate intent and the Territory's Annual Budget. Regular reporting and accountability will not be at risk as the statement of corporate intent will continue to be required at least annually.

The terminology utilised by the Act to be amended will be consistent with recent changes to the *Corporations Law* under which the companies are incorporated.

THE BILL

- Clause 1 Name of Act**
- States the name of the Bill. The title will assist quick location of the Act having regard to the matters it deals with.
- Clause 2 Commencement**
- Sets the dates of commencement of the provisions
- Clause 3 Act amended**
- Describes the Act to be amended by this Act.
- Clause 4 Interpretation**
- Amends the title of section 3 of the Act to be amended to "Definitions" and provides a definition for voting and non-voting shares.
- Clause 5 Substitution**
- This clause repeals section 11 of the Act to be amended and replaces it with a new section 11 which contains appropriate references to constitution in lieu of the former terms "memorandum of association and articles of association". There is no change to the intent or practical application of the original section.
- Clause 6 Substitution**
- This clause repeals section 13 of the Act to be amended.
- The new section 13 provides for the Chief Minister to authorise the transfer of voting shares between Ministers when held on trust for the Territory. This enables internal transfers to occur in accordance with modifications to Minister's administrative responsibility.
- The Treasurer is empowered to authorise the transfer of non-voting shares or rights between persons when the shares or rights are held on trust for the Territory. The provisions will enable a Territory owned corporation to buy back its own shares or rights with the approval of the Treasurer. This enables capital management of a company's equity through the issue and buy back of non-voting shares or rights.
- The Chief Minister or Treasurer may only transfer shares or rights in accordance with this section and on

trust for the Territory unless authorised by a resolution of the Legislative Assembly to do otherwise.

Clause 7

Preparation of statement of corporate intent

Section 19 of the principal Act is to be amended by providing that the Treasurer shall determine the timeframe for the preparation of a Territory owned corporation's statement of corporate intent. The statement of intent will be required to be prepared at least annually.

Clause 8

Schedule 3

Schedule 3 of the principal Act is amended by removing the existing restriction on the number of non-voting shares. A company may issue as many shares as instructed by the Treasurer in accordance with the Act.

It also provides that the company must register a transfer of a voting share as instructed by the Chief Minister, and a transfer of a non-voting share as instructed by the Treasurer when provided with a signed declaration from the relevant Minister when the transferor is not readily available to sign the transfer. The transfer may only be registered where it is a valid transfer under the principal Act.

Clause 9

Further amendments

All occasions where memorandum or articles of association appear are replaced with reference to the company's constitution.