

1996

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**BETTING (CORPORATISATION) (CONSEQUENTIAL PROVISIONS)
BILL 1996**

EXPLANATORY MEMORANDUM

**Circulated by authority of the Minister for Business, Employment and
Tourism
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The *Betting (Corporatisation) (Consequential Provisions) Bill 1996* ("the Bill") is part of a package of two Bills required to enable the Australian Capital Territory Totalizator Administration Board ("the Board") to be converted into a Territory owned corporation under the provisions of the *Territory Owned Corporations Act 1990*. The corporation will have the name ACTTAB Limited ("the Company"). The other Bill is entitled *Betting (Corporatisation) (Consequential Amendments) Bill 1996*.

These two Bills facilitate the corporatisation of the Board by transferring rights and liabilities from the Board to the Company, by detailing the terms and conditions of employment of transferred and new employees and for other transitional matters and for the consequential amendment of a number of Territory enactments.

The Bill facilitates the corporatisation of the Board by providing, among other things, for the following matters -

- the transfer of rights and liabilities from the Board to the Company or, in certain circumstances to the Territory;
- the substitution of the Company or the Territory for the Board in certain contracts, agreements or arrangements;
- the continuation of proceedings by or against the Board which had arisen before the relevant day (defined as 1 July 1996) but had not been instituted, or had been instituted before that day but had not been completed;
- the amendment of relevant registers by the Registrar-General to reflect changes in title to an interest in land which has become vested in the Company or the Territory;
- treating transferred and new employees similarly in their terms and conditions of employment as well as the continuation of other specific benefits on the same basis as they applied prior to corporatisation; and

- ensuring that certain transferred employees retain their rights of mobility into the Australian Public Service until 30 June 1998, until they cease their employment with the Company or until the Commonwealth enacts a law dealing with the mobility rights of such persons.

A further feature of the Bill is a provision which enables regulations to be made during a 12 month period to modify any other enactment or subordinate law necessary as a consequence of the corporatisation. This modification power expires on 30 June 1997.

The proposals will be budget neutral, however there are expected to be significant efficiency gains to Government.

Details of this Bill follow.

DETAILS

Short Title

Clause 1 - provides that the Bill, when enacted, will be known as the *Betting (Corporatisation) (Consequential Provisions) Act 1996*.

Commencement

Clause 2 - provides that clauses 1, 2, 3 and 5 will commence upon notification of the Act in the Gazette and the remaining provisions will commence on 1 July 1996.

Interpretation

Clause 3 - is an interpretation clause.

Subclause 3(1) defines the following terms:

- "Board" means the Australian Capital Territory Totalizator Administration Board set up by the *Betting (Totalizator Administration) Act 1964*.
- "Company" means the new corporation, that is, ACTTAB Limited.
- "relevant day" means 1 July 1996.

Subclause 3(2) provides that a reference in the Bill to the rights and liabilities of a person includes a reference to the assets of the person and the rights and liabilities of the person in relation to contracts, agreements or arrangements to which the person is a party.

Status of Company as successor of Board

Clause 4 - makes it clear that the intention of the Bill is that the Company is taken to be the successor of the Board and this is not affected by certain other provisions of the Bill.

Transfer of rights and liabilities

Clause 5 - deals with the transfer of rights and liabilities from the Board to the new Company or to the Territory.

Subclause 5(1) provides that the rights and liabilities of the Board existing immediately before 1 July 1996 vest in the Company on that day. However, this does not include those rights and liabilities of the Board which the Minister specifies vest in the Territory.

Subclause 5(2) provides that the Minister may, by a notice in the Gazette before 1 July 1996, specify rights and liabilities of the Board that vest in the Territory.

Subclauses 5(3) and 5(4) allow the Minister, by a notice under subclause (2), to identify and vest contracts, agreements and arrangements in the Territory. Subclause 5(3) provides for the name of the Territory to be substituted for the Board in such contracts, agreements or arrangements.

Subclause 5(5) provides for the substitution of the name of either the Company or the Territory, as appropriate, in contracts, agreements or arrangements affected by subclause 5(1) or 5(4).

Subclause 5(6) makes it clear that clause 5 does not apply to employment contracts under which the Board was an employer. Staff of the Board were employed under the *Public Sector Management Act 1994* and company employment matters are dealt with under clause 7.

Registration of changes in title to land

Clause 6 - deals with the registration of changes in title to land. Subclause (1) provides that in respect of an interest in land in the Territory which becomes vested in the Company under clause 5, the Company may lodge a notice with the Registrar-General. Subclause (2) similarly provides that in respect of an interest in land which becomes vested in the Territory under clause 5 the Minister may lodge a notice with the Registrar-General. Subclause (3) provides that the Registrar-General must accordingly make the appropriate changes to the registers to reflect the transfer of any interest in land to the Company or the Territory as the case may be.

Proceedings and Evidence

Clause 7 - provides generally for the transfer of causes of action from the Board to the Company.

Subclause 7(1) provides that where prior to 1 July 1996, a cause of action had accrued by or against the Board concerning a right or liability vested in the Company or the Territory under clause 5, the limitation period relating to that action had not expired and proceedings had not been commenced, those proceedings may be instituted by or against the Company or the Territory as if the proceedings were being instituted by or against the Board.

Subclause 7(2) provides that where prior to 1 July 1996, a cause of action had accrued by or against the Board concerning a right or liability vested in the Company or the Territory under clause 5, Part III of the *Limitation Act 1985* applies in respect of the institution of those proceedings by or against the Company or the Territory as if the action had accrued by or against the Company or the Territory. The effect of Part III of the *Limitation Act 1985* is generally to modify the limitation period in relation to certain causes of action in certain circumstances.

Subclause 7(3) provides that where prior to 1 July 1996, proceedings were pending by or against the Board concerning a right or liability vested in the Company or the Territory under clause 5, but had not been completed, those proceedings may be continued by or against the Company or the Territory as if they were being continued by or against the Board.

Subclause 7(4) provides that the relevant court, tribunal, commission or other body before which the proceedings are being conducted may give directions in relation to the institution or continuance of those proceedings.

Subclause 7(5) provides that any book or document that would have been admissible in evidence in proceedings by or against the Board is also admissible in proceedings by or against the Company or the Territory.

Subclause 7(6) defines the term "cause of action" for the purposes of this clause as being a right of review or any other civil proceeding. It includes a right of review under the *Ombudsman Act 1989*.

Employees and employment conditions

Clause 8 - ensures that transferred and new staff of the Company are treated similarly in their terms and conditions of employment pending the coming into existence of an award or the making of an agreement between the Company and its employees.

Subclause 8(1) is an interpretation clause which defines various terms used in this clause.

Subclause 8(2) provides that subject to subclause 8(3), the present staff of the Board (formerly employed by the Territory under the *Public Sector Management Act 1994*) shall from 1 July 1996 be employed by the Company.

Subclause 8(3) provides a mechanism to ensure that transferred employees who were officers under the *Public Sector Management Act 1994* prior to corporatisation, retain their rights of mobility into the Australian Public Service until 30 June 1998, until they cease their employment with the Company, or until a Commonwealth law comes into effect which deals with mobility between the Company and the Australian Public Service. During this period the transferred employee is deemed to be an officer employed under the *Public Sector Management Act 1994* who is on leave without pay for the purposes of employment with the Company.

Subclause 8(4) provides that any associated matters attached to the leave without pay referred to in subclause (3) may be provided for in the management standards.

Subclause 8(5) provides that if a transferred employee is dismissed and then reinstated he or she shall be deemed to have continued to be a transferred employee during that "layover" period.

Subclause 8(6) provides that where a provision of a Commonwealth law is enacted which deals with mobility between the Company and the Australian Public Service for transferred employees and the provision commences or commenced on a particular day, the Minister administering the *Public Sector Management Act 1994* may specify that date in the Gazette.

Subclause 8(7) provides that subclause 8(3) expires at the end of the day preceding the day specified in subclause 8(6).

Subclause 8(8) provides that a transferred employee keeps any benefits in respect of long service leave, maternity leave, parental leave, recreation leave and sick leave that had accrued to him or her before 1 July 1996.

Subclause 8(9) provides that in addition to any relevant award conditions, an employee of the Company accrues benefits in respect of long service leave, maternity leave, parental leave, recreation leave, and sick leave on the same basis that these accrued to transferred employees before 1 July 1996.

Subclause 8(10) provides corresponding references to persons in the Company for the terms "Commissioner", "relevant Chief Executive", "officer", "employee" and "public employee" in the *Public Sector Management Act 1994*, the management standards and any declaration made under section 19 of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* for the purposes of subclauses (8) and (9). The subclause is an aid to establishing the entitlements of employees of the Company pending the coming into existence of an award or the making of an agreement between the Company and its employees.

Subclause 8(11) states that regulations may be made to provide for other corresponding references to persons or things in relation to employment.

Subclause 8(12) requires that the Company establish appeal, review and grievance procedures in respect of employment matters, in consultation with staff.

Subclause 8(13) provides that for the purposes of establishing the entitlement of a transferred employee to a benefit, any period of eligible employment relevant to that entitlement which occurred prior to 1 July 1996 shall be deemed to be employment with the Company.

Subclause 8(14) provides that any matter or thing relating to the employment of a transferred employee that occurred before 1 July 1996 may be dealt with after that day as if the person had been employed by the Company at that time.

Subclause 8(15) provides that any matter or thing relating to the employment of a transferred employee that was pending under the *Public Sector Management Act 1994* before 1 July 1996 may be completed as if the Act still applied.

Subclause 8(16) provides that any matter or thing relating to the employment of a transferred employee that was in effect under the *Public Sector Management Act 1994* before 1 July 1996 may continue in effect as if the person had been employed by the Company at that time.

Subclause 8(17) ensures that employees of the Company are covered by the *Occupational Health and Safety Act 1989* to the same extent as it applies to employees under the *Public Sector Management Act 1994*.

Subclause 8(18) provides that this clause is subject to any applicable award made under the *Industrial Relations Act 1988* of the Commonwealth or an agreement between the Company and its employees.

Financial statements and final reports of the Board

Clause 9 - deals with the reports and financial statements which the Board is required to prepare to satisfy requirements under the *Audit Act 1989*, the *Annual Reports (Government Agencies) Act 1995* and the *Betting (Totalizator Administration) Act 1964*.

Subclause 9(1) requires the Company to, on behalf of the Board, lodge with the Auditor-General appropriate financial statements in respect of the period commencing 1 July 1995 and ending 30 June 1996 for the purpose of complying with section 93 of the *Audit Act 1989*.

Subclause 9(2) requires the Company to, on behalf of the Board, submit an annual report to the appropriate Chief Executive, relating to the Board's operations for the period commencing 1 July 1995 and ending 30 June 1996. This is in accordance with requirements under section 8 of the *Annual Reports (Government Agencies) Act 1995*.

Subclause 9(3) specifies that the report under subclause 9(2) must detail any direction issued by the Minister to the Board under section 9 of the *Betting (Totalizator Administration) Act 1964* during the period commencing 1 July 1995 and ending 30 June 1996. A statement as to how the direction was given effect must also be included in the report.

Subclause 9(4) requires that the Company prepare a report on behalf of the Board, as soon as possible after 30 June 1996 in respect of the period 1 April 1996 to 30 June 1996 to satisfy quarterly reporting requirements under section 55 of the *Betting (Totalizator Administration) Act 1964*.

Transfer of records relating to Territory functions

Clause 10 - provides for the Company to transfer to the Territory, documents which were previously maintained by the Board but after 1 July 1996 will relate to a Territory function due to the transfer of those powers and functions to the Territory. Where it is not practicable to transfer a document within a reasonable time, the Company must grant the Territory reasonable access to the document until it can be transferred.

References to the Board, etc.

Clause 11 - provides that subject to any regulation made under this Act, a reference in any enactment or subordinate law or in any instrument or document other than one referred to in subclause 5(5) to the Board, an officer of the Board or any matter or thing relating to the Board is to be read as a reference to the Company, an officer of the Company or a corresponding matter or thing relating to the Company as appropriate. This clause is merely a "safety net" in case a reference to the Board is overlooked, pending the making of a regulation under clause 13 to amend the reference.

Arrangements

Clause 12 - enables the Minister and the Company to enter into an arrangement by instrument in respect of any matter relating to, or in connection with the establishment of the new corporation. In particular, an arrangement may allow one party to exercise a power vested in the other party, where it becomes necessary to do so. The instrument is disallowable and therefore subject to scrutiny by the Assembly. This clause operates as a further "safety net" (in conjunction with clauses 11 and 13), where urgent action is required and where there may not be time to make a regulation under clause 13.

Regulations

Clause 13 - enables the Executive to make regulations for the purposes of this Bill. The regulations may confer powers or functions on the Company or Territory substantially corresponding with, or relating to any powers and functions previously held by the Board and may make provision for any matter arising from the conferral of such powers and functions. The regulations may also deal with any matter consequential upon the vesting of any asset, right or liability resulting from the establishment of the new corporation.

The regulations may also modify the operation of any enactment or subordinate law including making various technical changes. Regulations modifying an enactment or subordinate law may not be made under this provision after 30 June 1997. The modification clause is included because of the complexity of the corporatisation project and builds in some flexibility. The 12 months sunset clause (which applies only to the power to make modifications) and the ability of the Assembly to disallow regulations provide a safeguard. Regulations may be made under this clause to modify various references in other legislation.