



AUSTRALIAN CAPITAL TERRITORY

# **Territory Owned Corporations Amendment Act (No 2) 1999**

**No. 72 of 1999**

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## **Territory Owned Corporations Amendment Act (No 2) 1999**

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### **An Act to amend the *Territory Owned Corporations Act 1990***

*[Notified in ACT Gazette No. 50: 15 December 1999]*

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

#### **1 Name of Act**

This Act is the *Territory Owned Corporations Amendment Act (No 2) 1999*.

#### **2 Commencement**

(1) Sections 1, 2 and 3 commence on the day this Act is notified in the *Gazette*.

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

(3) However, if a provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the first day after that period.

#### **3 Act amended**

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

#### **4 Interpretation**

Section 3 is amended—

- (a) by omitting the heading and substituting the following heading:  
“3 **Definitions**”; and
- (b) by inserting in subsection (1) the following definitions:  
“*non-voting share* means a share in a Territory owned corporation that is not a voting share.  
*voting share* means a share in a Territory owned corporation that confers the right to vote at a general meeting.”.

#### **5 Substitution**

Section 11 is repealed and the following section substituted:

##### **“11 Constitution**

“(1) The voting shareholders of a Territory owned corporation must ensure that the constitution of the corporation or any subsidiary always contains provisions to the effect of those required by Schedules 2 and 3.

“(2) If the constitution of a company that becomes a Territory owned corporation or subsidiary does not comply with Schedule 2 or 3, the voting shareholders must ensure that compliance is achieved as soon as possible.

“(3) The Legislative Assembly may approve a provision in the constitution of a Territory owned corporation or subsidiary that is inconsistent with this Act.

“(4) A provision in the constitution of a Territory owned corporation or subsidiary that—

- (a) is inconsistent with this Act; and
- (b) has not been approved by the Legislative Assembly;

is of no effect to the extent of the inconsistency.”.

#### **6 Substitution**

Section 13 is repealed and the following section substituted:

##### **“13 Shares in corporations**

“(1) The Chief Minister may, in writing, authorise a person to participate in the formation of a company that it is intended will become a Territory owned corporation or a subsidiary.

“(2) The Chief Minister may, in writing, authorise a person to hold, on behalf of the Territory, a voting share in a company that is, or it is intended will become, a Territory owned corporation.

“(3) The Treasurer may, in writing, authorise a person to hold, on behalf of the Territory, a non-voting share in a company that is, or it is intended will become, a Territory owned corporation.

“(4) A person is eligible to hold a share or a right relating to a share in a Territory owned corporation only if—

- (a) in the case of a voting share—he or she is a Minister and has been authorised under subsection (2); or
- (b) in the case of a non-voting share—
  - (i) he or she has been authorised under subsection (3); or
  - (ii) the person is a Territory owned corporation; or
- (c) the person is eligible under subsection (9).

“(5) Subject to subsection (9), a person who holds a share or a right relating to a share in a Territory owned corporation holds the share or right on trust for the Territory.

“(6) The Chief Minister may, in writing, direct a person who holds a voting share or a right relating to a voting share on trust for the Territory to transfer it to another person named in the instrument.

“(7) The Treasurer may, in writing, direct a person who holds a non-voting share or a right relating to a non-voting share on trust for the Territory to transfer it to a person (including the corporation that has issued the share or right) named in the instrument.

“(8) A direction under subsection (6) or (7) is effective only if—

- (a) the proposed transferee is eligible under paragraph (4) (a) or (b) to hold the share or right; or
- (b) the Legislative Assembly has, by resolution, approved the direction.

“(9) If the Legislative Assembly approves a direction under paragraph (8) (b), a person to whom a share or right is transferred pursuant to the direction—

- (a) is eligible to hold the share or right; but
- (b) subsection (5) does not apply to the person in relation to the share or right so transferred.

“(10) A person who holds a share or right on trust for the Territory may not transfer it otherwise than under a direction under this section.”.

## **7 Preparation of statement of corporate intent**

Section 19 is amended by omitting from subsection (1) all the words after “corporation” (last occurring) and substituting “and at subsequent intervals not exceeding 12 months specified by the Treasurer in writing”.

## **8 Schedule 3**

Schedule 3 is amended—

- (a) by omitting clause 2 of Part 1; and
- (b) by omitting from clause 1 of Part 2 “3 other shares” and substituting “such other shares as the company may issue”; and
- (c) by inserting after clause 1 of Part 2 the following clause:
  - “1A. The company may issue a non-voting share or a right relating to a non-voting share only if the Treasurer has agreed in writing to the issue.”; and
- (d) by adding at the end of Part 2 the following clauses:
  - “6. The company must register a transfer of a voting share or a right relating to a voting share that is signed by the Chief Minister on behalf of the transferor and is accompanied by a declaration by the Chief Minister that the signature of the holder of the share or right cannot readily be obtained.
  - “7. The company must register a transfer of a non-voting share or a right relating to a non-voting share that is signed by the Treasurer on behalf of the transferor and is accompanied by a declaration by the Treasurer that the signature of the holder of the share or right cannot readily be obtained.
  - “8. The company may only register a transfer of a share or a right if the transfer has been made under a direction under section 13 of the *Territory Owned Corporations Act 1990* or under a provision required to be included in the constitution of the company by clause 6 or 7.”.

## **9 Further amendments**

The Act is further amended as set out in the Schedule.

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**SCHEDULE**

(See s 9)

**FURTHER AMENDMENTS**

**Paragraph 9 (1) (b)—**

Omit “memorandum and articles of association”, substitute “constitution”.

**Subsection 9 (2)—**

Omit “memorandum or articles of association” (first occurring), substitute “constitution”.

**Paragraph 9 (2) (b)—**

Omit “memorandum or articles of association”, substitute “constitution”.

**Section 10—**

Omit “memorandum or articles of association”, substitute “constitution”.

**Paragraph 12 (3) (a)—**

Omit “memorandum or articles of association”, substitute “constitution”.

**Subsection 17 (3)—**

Omit “memorandum or articles of association”, substitute “constitution”.

**Schedule 2, heading—**

Omit “MEMORANDUM OF ASSOCIATION”, substitute “THE CONSTITUTION”.

**Schedule 2—**

Omit “memorandum of association”, substitute “constitution”.

**Schedule 2, clause 1—**

Omit “Memorandum and articles of association”, substitute “constitution”.

**Schedule 2, clause 2—**

Omit “memorandum of association”, substitute “constitution”.

**SCHEDULE**—continued

**Schedule 2, clause 3—**

Omit “memorandum of association”, substitute “constitution”.

**Schedule 3, heading—**

Omit “PROVISIONS TO BE INCLUDED IN THE ARTICLES OF ASSOCIATION”, substitute “FURTHER PROVISIONS TO BE INCLUDED IN THE CONSTITUTION”.

**Schedule 3, Part 1—**

Omit “articles of association”, substitute “constitution”.

**Schedule 3, Part 1, clause 6—**

Omit “memorandum and articles of association”, substitute “constitutions”.

**Schedule 3, Part 1, clause 7—**

Omit “memorandum and articles of association”, substitute “constitution”.

**Schedule 3, Part 1, clause 8—**

Omit the clause.

**Schedule 3, Part 2—**

Omit “articles of association”, substitute “constitution”.

**Schedule 3, Part 3—**

Omit “articles of association”, substitute “constitution”.

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**Endnote**

**Act amended**

1 Republished as in force on 10 July 1998. See also Act 1999 No 10.

*[Presentation speech made in Assembly on 21 October 1999]*