



Australian Capital Territory

Financial Management Legislation Amendment Act 2005

A2005-52

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	3
4 Section 3B	4
5 Section 8	4
6 Budget papers	
Section 10 (c)	5
7 Section 12	5
8 Section 12A	6
9 Supplementary budget papers	
Section 13 (2) to (5)	7
10 Section 13A	9
11 Section 16	9
12 Section 19C	10

J2005-61

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Contents

	Page	
13	Section 19D	11
14	Amendment of financial targets Section 19E	12
15	Amendment of budgets Section 19F	13
16	Purpose and contents of pre-election budget update Section 20D (3) (b)	13
17	Annual financial statements of the Territory Section 22 (2)	13
18	Responsibility for annual financial statements Section 23 (2) (b)	13
19	Audit of annual financial statements Section 24 (1)	14
20	Section 24 (2)	14
21	Section 24 (3) (a)	14
22	Division 3.2 heading	14
23	Annual financial statements of departments Section 27 (2)	14
24	Section 27 (3) (b)	15
25	Section 27 (3) (c) to (e)	15
26	Section 27 (4) and (5)	15
27	Section 28	15
28	Audit of financial statements of departments Section 29 (1)	15
29	Section 29 (2)	16
30	Section 30	16
31	Section 30A	16
32	Section 31	19
33	Payments from territory banking account Section 37 (1)	20
34	Section 37 (2) (d)	20
35	New section 37 (3)	20
36	New sections 51A, 51B and 51C	21
37	Section 52	22
38	Part 8	22
39	Part 9	36
40	Sections 64 to 68	36

	Page	
41	New part 9	36
42	New part 11	59
43	Dictionary, note 2 new dot points	62
44	Dictionary, new definition of <i>applicable governmental policies</i>	62
45	Dictionary, definition of <i>capital injection</i>	62
46	Dictionary, new definition of <i>CEO</i>	63
47	Dictionary, definition of <i>chief executive officer</i>	63
48	Dictionary, new definitions	63
49	Dictionary, definition of <i>generally accepted accounting practice</i>	64
50	Dictionary, new definitions	64
51	Dictionary, definition of <i>GST</i>	64
52	Dictionary, new definition of <i>material interest</i>	64
53	Dictionary, definition of <i>public trading enterprise</i>	64
54	Dictionary, new definition of <i>relevant territory authority</i>	65
55	Dictionary, definition of <i>responsible Minister</i> , paragraph (c)	65
56	Dictionary, definition of <i>statement of intent</i>	65
Schedule 1	Amendments of other legislation	66
Part 1.1	ACTION Authority Act 2001	66
Part 1.2	Australian Capital Tourism Corporation Act 1997	73
Part 1.3	Building and Construction Industry Training Levy Act 1999	78
Part 1.4	Canberra Institute of Technology Act 1987	82
Part 1.5	Canberra Institute of Technology Regulation 1994	100
Part 1.6	Cemeteries and Crematoria Act 2003	100
Part 1.7	Cultural Facilities Corporation Act 1997	104
Part 1.8	Gambling and Racing Control Act 1999	108
Part 1.9	Health Promotion Act 1995	115
Part 1.10	Independent Competition and Regulatory Commission Act 1997	124
Part 1.11	Insurance Authority Act 2005	128
A2005-52	Financial Management Legislation Amendment Act 2005	contents 3

Contents

		Page
Part 1.12	Legal Aid Act 1977	129
Part 1.13	Long Service Leave (Building and Construction Industry) Act 1981	129
Part 1.14	Long Service Leave (Contract Cleaning Industry) Act 1999	152
Part 1.15	National Exhibition Centre Trust Act 1976	166
Part 1.16	Planning and Land Act 2002	174
Part 1.17	Planning and Land Regulation 2003	180
Part 1.18	Public Trustee Act 1985	180
Part 1.19	Remuneration Tribunal Act 1995	192
Part 1.20	Stadiums Authority Act 2000	193
Part 1.21	Taxation Administration Act 1999	200
Part 1.22	University of Canberra Act 1989	200



Australian Capital Territory

Financial Management Legislation Amendment Act 2005

A2005-52

An Act to amend the *Financial Management Act 1996*, to also amend other legislation about statutory authorities and their governance procedures, and for other purposes

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

J2005-61

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

1 Name of Act

This Act is the *Financial Management Legislation Amendment Act 2005*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:
- section 7
 - section 9
 - section 10
 - section 14
 - section 15
 - section 17
 - section 18
 - sections 19 to 21
 - section 22
 - sections 23 to 26
 - section 27
 - sections 28 and 29
 - section 30
 - section 31
 - section 32
 - section 38, so far as it inserts the following new sections:
 - section 63 (Annual financial statements of territory authorities)
 - section 64 (Responsibility for annual financial statements of territory authorities)
 - section 65 (Audit of annual financial statements of territory authorities)
 - section 66 (Annual financial statements of territory authorities to be included in annual reports etc)

- section 67 (Treasurer may require interim financial statements etc for territory authorities)
- section 68 (Statements of performance of territory authorities)
- section 69 (Responsibility for territory authority statements of performance)
- section 70 (Scrutiny of territory authority statements of performance)
- section 71 (Territory authority statements of performance to be included in annual reports etc)
- section 38, so far as it omits the following sections:
 - section 59 (Annual financial statements)
 - section 60 (Responsibility for annual financial statements)
 - section 61 (Audit of annual financial statements)
 - section 62 (Presentation of annual financial statements)
 - section 63 (Interim financial statements)
- sections 39 and 40
- section 42, so far as it inserts the following sections:
 - part 11 heading (Transitional)
 - section 109 (Financial Management Legislation Amendment Act 2005—provisions with 1 July 2005 application)
 - section 111 (Transitional regulations)
- section 49.

Note The naming and commencement provisions automatically commence on the notification day.

(2) The remaining provisions commence on 1 January 2006.

3 Legislation amended

This Act amends the *Financial Management Act 1996*.

Note This Act also amends or repeals other legislation (see sch 1).

4 Section 3B

substitute

3B Declaration that certain bodies are not territory authorities for Act

- (1) The Treasurer may declare that a stated body (other than a body mentioned in section 54 (1)) is not a territory authority for this Act or a stated provision of this Act.
- (2) The Treasurer may declare that a stated body mentioned in section 54 (1) is not a territory authority for a stated provision of this Act (other than section 73 (1)).

Note Section 73 gives territory authorities to which pt 9 (Governance of territory authorities) applies corporate status.

- (3) A declaration is a notifiable instrument.

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

5 Section 8

substitute

8 Form of appropriations

- (1) An Appropriation Act may make separate appropriations in relation to each department for—
 - (a) the provision of outputs by the department; and
 - (b) any capital injection to be provided to the department; and
 - (c) any payments to be made by the department on behalf of the Territory.
- (2) An Appropriation Act may make separate appropriations in relation to a territory authority or territory-owned corporation for—
 - (a) the provision of outputs by the authority or corporation; and

-
- (b) any capital injection to be provided to the authority or corporation.

6 **Budget papers**
Section 10 (c)

substitute

- (c) the proposed budget for each territory authority and territory-owned corporation for the year; and

7 **Section 12**

substitute

12 **Departmental budgets**

- (1) A proposed budget for a department for a financial year presented to the Legislative Assembly under section 10 (b) must include—
- (a) the financial statements required under the financial management guidelines; and
 - (b) a statement that sets out the outputs and classes of outputs it is proposed the department should provide during the year and the performance criteria to be met by the department in providing the outputs; and
 - (c) if, during the year, the department is to be given a capital injection that must be repaid—a statement that—
 - (i) states that the capital injection is a capital injection; and
 - (ii) sets out the conditions under which the injection is to be given, including the requirements about the time within which it must be repaid.
- (2) Subsection (1) (b) does not apply to the Legislative Assembly secretariat.

- (3) A proposed budget must be in a form that facilitates a comparison between—
 - (a) the proposed budget for the department; and
 - (b) the budget for the department for the previous financial year; and
 - (c) the estimated results for the department for the previous financial year.
- (4) A proposed budget must also include, for the financial statements mentioned in subsection (1) (a), budget estimates for each of the next 3 financial years.

8 Section 12A

substitute

12A Territory authority and territory-owned corporation budgets

- (1) A proposed budget presented to the Legislative Assembly under section 10 (c) for a territory authority or territory-owned corporation for a financial year must include—
 - (a) the financial statements required under the financial management guidelines; and
 - (b) for a prescribed territory authority or prescribed territory-owned corporation—a statement that sets out the outputs and classes of outputs it is proposed that the authority or corporation should provide during the year and the performance criteria to be met by the authority in providing the outputs; and

-
- (c) for a territory authority or territory-owned corporation that, during the year, is to be given a capital injection that must be repaid—a statement that—
 - (i) states that the capital injection is an injection that must be repaid; and
 - (ii) sets out the conditions under which the injection is to be given, including the requirements about the time within which it must be repaid.
 - (2) A proposed budget must be in a form that facilitates a comparison between—
 - (a) the proposed budget for the authority or corporation; and
 - (b) the budget for the authority or corporation for the previous financial year; and
 - (c) the estimated results for the authority or corporation for the previous financial year.
 - (3) A proposed budget must also include, for the financial statements mentioned in subsection (1) (a), budget estimates for each of the next 3 financial years.

9 Supplementary budget papers **Section 13 (2) to (5)**

substitute

- (2) The supplementary budget papers must, for each department, territory authority and territory-owned corporation for which an appropriation is provided by the bill (an *affected entity*)—
 - (a) state, for each purpose mentioned in section 8 that applies to the affected entity—
 - (i) the amount of the appropriation provided in the first Appropriation Act; and

- (ii) the variations (if any) previously made to the appropriation under this Act; and
 - (iii) the amount of the appropriation provided by the bill; and
 - (iv) the total amount appropriated for the entity for the financial year; and
- (b) indicate the impact of the proposed variation.
- (3) For subsection (2) (b), the supplementary budget papers need not include an original or final budgeted financial statement (a ***budgeted statement***) for an affected entity.
- (4) If the supplementary budget papers do not include a budgeted statement for an affected entity—
 - (a) the supplementary budget papers must state the reasons why the budgeted statement for the entity is not included; and
 - (b) the Treasurer must present the budgeted statement for the entity to the Legislative Assembly as soon as practicable after the passing of the bill.
- (5) A budgeted statement for an affected entity—
 - (a) must include details of the impact on the budget of the entity of all variations to the appropriation that happened in the financial year before the passing of the bill; and
 - (b) may show the impact of variations other than variations resulting from additional appropriations.

Example for par (b)

the impact of revised economic forecasts

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).

10 Section 13A

substitute

13A Amendment of budgets for supplementary appropriation

- (1) If an appropriation is made for a department, territory authority or territory-owned corporation by an Appropriation Act other than the first Appropriation Act for a financial year, the budget for the department, authority or corporation is amended in accordance with—
 - (a) the supplementary budget papers presented to the Legislative Assembly under section 13 (1) in relation to the bill for the Act by which the appropriation was made; and
 - (b) any statement presented to the Legislative Assembly under section 13 (4) (b) in relation to the bill.
- (2) In this section:

budget, for the department, territory authority or territory-owned corporation, means the budget for the department, authority or corporation for the financial year presented to the Legislative Assembly under section 10 (b) or (c) (Budget papers) and, if the budget has been amended under this Act, the budget as amended.

11 Section 16

substitute

16 Transfer of functions after Appropriation Act passed

- (1) This section applies if, after an Appropriation Act for a financial year is passed, the responsibility for a service or function for which an appropriation is made in the Act is transferred from the entity to which the appropriation is made to another entity.

- (2) The Treasurer may, in writing, direct that the appropriation does not lapse but may, in accordance with the direction, be issued to, or applied by, the other entity for the service or function.
- (3) If the Treasurer gives a direction under subsection (2), the Treasurer must present a copy of the direction to the Legislative Assembly within 3 sitting days after the day it is given.
- (4) This section does not apply to a superannuation appropriation.
- (5) In this section:

entity means a department, territory authority or territory-owned corporation.

12 Section 19C

substitute

19C Amendment of capital injection conditions

- (1) This section applies in relation to the conditions of a capital injection set out in a statement included in a proposed budget for a department, a territory authority or a territory-owned corporation for a financial year under section 12 (1) (c) (ii) or section 12A (1) (c) (ii).
- (2) The Treasurer may, in writing, amend the conditions.
- (3) An amendment must state the Treasurer's reasons for the amendment.
- (4) An amendment is a notifiable instrument.

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

13 Section 19D*substitute***19D Amendment of performance criteria**

- (1) This section applies in relation to the performance criteria set out in a statement included in a proposed budget for a department, a prescribed territory authority or a prescribed territory-owned corporation for a financial year under section 12 (1) (b) or section 12A (1) (b).
- (2) The responsible Minister for the department, territory authority or territory-owned corporation may, in writing, amend the performance criteria.
- (3) Without limiting subsection (2) the responsible Minister may amend the performance criteria if—
 - (a) the appropriations for the department, authority or corporation are varied under section 14 (Transfer of funds between appropriations) or section 17 (Variation of appropriations for Commonwealth grants); or
 - (b) a direction is given under section 15 (1) (Transfer of funds within appropriations) in relation to an appropriation made for the department, authority or corporation; or
 - (c) funds are transferred to or from the department, authority or corporation under section 16 (Transfer of functions after Appropriation Act passed); or
 - (d) funds are given to the department, authority or corporation under section 18 (Treasurer's advance); or
 - (e) funds mentioned in section 19B (Authorisation of expenditure of certain Commonwealth grants) are given to the department, authority or corporation; or

- (f) changes happen in the priorities of the department, authority or corporation; or
 - (g) the Minister is satisfied that other performance criteria should be adopted for the provision of outputs by the department, authority or corporation.
- (4) An amendment of the performance criteria must be made in a way that—
- (a) for a department—the budget as amended will comply with section 12 (3); and
 - (b) for a territory authority or territory-owned corporation—the budget as amended will comply with section 12A (2).
- (5) An amendment of the performance criteria is a notifiable instrument.

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

- (6) In this section:

budget, for the department, territory authority or territory-owned corporation, means the budget for the department, authority or corporation for the financial year presented to the Legislative Assembly under section 10 (b) or (c) (Budget papers) and, if the budget has been amended under this Act, the budget as amended.

prescribed territory authority means a territory authority prescribed for section 12A (1) (b).

prescribed territory-owned corporation means a territory-owned corporation prescribed for section 12A (1) (b).

14 Amendment of financial targets

Section 19E

omit

**15 Amendment of budgets
Section 19F**

omit

**16 Purpose and contents of pre-election budget update
Section 20D (3) (b)**

omit

public trading enterprises

substitute

the public trading enterprise sector

**17 Annual financial statements of the Territory
Section 22 (2)**

omit

practice

substitute

principles

**18 Responsibility for annual financial statements
Section 23 (2) (b)**

omit

practice

substitute

principles

**19 Audit of annual financial statements
Section 24 (1)**

omit

a copy of

20 Section 24 (2)

omit

a copy of

substitute

the

21 Section 24 (3) (a)

omit

a copy of

22 Division 3.2 heading

substitute

**Division 3.2 Financial reports and performance
statements of departments**

**23 Annual financial statements of departments
Section 27 (2)**

omit

practice

substitute

principles

24 Section 27 (3) (b)

omit

25 Section 27 (3) (c) to (e)

renumber as section 27 (3) (b) to (d)

26 Section 27 (4) and (5)

substitute

(4) In this section:

budget, for a department for a financial year, means the budget for the department for the year presented to the Legislative Assembly under section 10 (b) (Budget papers).

27 Section 28

substitute

28 Responsibility for annual financial statements of departments

- (1) The annual financial statements of a department for a financial year must have endorsed on them, or attached to them, a statement of responsibility signed by the responsible chief executive.
- (2) The statement of responsibility must state that, in the responsible chief executive's opinion, the annual financial statements fairly reflect the financial operations of the department during the financial year and the financial position of the department at the end of the year.

**28 Audit of financial statements of departments
Section 29 (1)**

omit

a copy of

29 Section 29 (2)

substitute

- (2) The financial statements must have endorsed on them, or attached to them, the statement of responsibility made for them.

30 Section 30

substitute

30 Departmental annual financial statements to be included in annual reports etc

A report prepared under the *Annual Reports (Government Agencies) Act 2004* for a department for a financial year must include, or have attached to it—

- (a) the department's annual financial statements for the year; and
- (b) the audit opinion under section 29 (3) about the financial statements.

31 Section 30A

substitute

30A Statements of performance of departments

- (1) As soon as practicable after the end of each financial year, each department must prepare a statement of the performance of the department in providing each class of outputs provided by it during the year.
- (2) The statement must—
 - (a) compare the performance of the department in providing each class of the outputs with the forecast of the performance in the department's budget for the year; and

- (b) give particulars of the extent to which the performance criteria set out in the budget for the provision of the outputs were met.
- (3) In this section:

budget, for the department, means the budget for the department for the financial year presented to the Legislative Assembly under section 10 (b) (Budget papers) and, if that budget has been amended under this Act, the budget as amended.

30B Responsibility for departmental statements of performance

- (1) A statement of performance of a department for a financial year must have endorsed on it, or attached to it, a statement of responsibility signed by the responsible chief executive.
- (2) The statement of responsibility must state that, in the responsible chief executive's opinion, the statement of performance fairly reflects the performance of the department in providing each class of outputs during the financial year.

30C Scrutiny of departmental statements of performance

- (1) The responsible chief executive of a department must give the auditor-general the department's statement of performance for a financial year as soon as practicable after the statement is prepared.
- (2) The statement of performance must have endorsed on it, or attached to it, the statement of responsibility made for it under section 30B.
- (3) The auditor-general must give the chief executive a report about the statement of performance as soon as practicable after the auditor-general receives it.
- (4) The report must be prepared in accordance with the financial management guidelines.

30D Departmental statements of performance to be included in annual reports etc

A report prepared under the *Annual Reports (Government Agencies) Act 2004* for a department for a financial year must include, or have attached to it—

- (a) the department's statement of performance for the year; and
- (b) the auditor-general's report under section 30C (3) about the statement of performance.

30E Half-yearly departmental performance reports

- (1) Within 30 days after 31 December in each financial year, each Minister must prepare a half-yearly performance report for each department for which the Minister is responsible.
- (2) The report must include—
 - (a) a progress report on delivery of outputs; and
 - (b) an explanation of any significant variations from performance criteria.
- (3) The Minister must present the report to the Legislative Assembly on the first sitting day after the report is prepared.
- (4) If the report is not presented to the Legislative Assembly under subsection (3) within 30 days after 31 December, the Minister must make a copy of the report available to members of the Legislative Assembly within the 30 days.
- (5) This section does not apply to the Legislative Assembly secretariat.

32 Section 31*substitute***31 Responsibilities of chief executives of departments**

- (1) The responsible chief executive of a department is accountable to the responsible Minister of the department for the efficient and effective financial management of the department.
- (2) Without limiting subsection (1), the responsible chief executive of a department is responsible, under the responsible Minister, for ensuring—
 - (a) that money spent by the department is spent in accordance with appropriations made for the department (including appropriations available under section 34B); and
 - (b) that, as far as practicable, the operations of the department for a financial year are consistent with, and comparable to, the budget for the department for the year; and
 - (c) that the officers and employees of the department comply with this Act (including the financial management guidelines); and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any guideline (see Legislation Act, s 104).

 - (d) that proper accounts and records are kept of the transactions and affairs of the department in accordance with generally accepted accounting principles; and
 - (e) that adequate control is maintained over the assets of the department and assets in the control of the department; and
 - (f) that adequate control is maintained over the incurring of liabilities by the department.

- (3) A report prepared under the *Annual Reports (Government Agencies) Act 2004* for a financial year by the responsible chief executive of a department must include an explanation of material variations between the actual results of the department for the year and the budget for the department for the year.
- (4) In this section:
- budget*, for a department for a financial year, means the budget for the department for the year presented to the Legislative Assembly under section 10 (b) (Budget papers) and, if that budget has been amended under this Act, the budget as amended.

**33 Payments from territory banking account
Section 37 (1)**

substitute

- (1) An amount must not be paid out of the territory banking account except under an appropriation to a departmental banking account, a territory authority banking account or a territory-owned corporation banking account.

34 Section 37 (2) (d)

substitute

- (d) this Act, section 58 (7) (which is about transfers between the territory banking account and territory authorities of interest earned on certain investments for territory authorities).

35 New section 37 (3)

insert

- (3) This section does not apply to an overdraft or credit facility for a territory authority approved under section 59 (5).

36 New sections 51A, 51B and 51C

insert

51A Transfer of departmental trust banking accounts

- (1) This section applies if the Treasurer believes that it is desirable, because of changes in departmental responsibilities, to transfer a departmental trust banking account from a department to another department.
- (2) The Treasurer may, in writing, direct the responsible chief executive of the department that holds the account to arrange for it to be transferred to the other department.
- (3) If a chief executive receives a direction under subsection (2), the chief executive must comply with it.
- (4) An account transferred in accordance with the direction becomes a trust banking account of the department to which it is transferred.

51B Transfers between trust banking accounts—changes in departmental responsibilities

- (1) This section applies if the Treasurer believes that it is necessary, because of changes in departmental responsibilities, to transfer an amount held in a departmental trust banking account (the *first account*) to a trust banking account of another department.
- (2) The Treasurer may, in writing, direct the responsible chief executive of the department that holds the first account to transfer the amount.
- (3) If a chief executive receives a direction under subsection (2), the chief executive must comply with it.

51C Transfers between trust banking accounts—investment

Amounts may at any time be transferred between trust banking accounts to facilitate investment of trust money.

37 Section 52

substitute

52 Transfers between trust banking account and territory banking account

Amounts may only be transferred between a trust banking account and the territory banking account—

- (a) to facilitate investment of the trust money; or
- (b) to make a payment required by section 53A (6) (Unclaimed trust money).

38 Part 8

substitute

Part 8 Financial provisions for territory authorities

54 Application—pt 8

- (1) This part applies to the following territory authorities:
 - ACT Gambling and Racing Commission
 - ACT Health Promotion Authority
 - ACT Insurance Authority
 - ACTION Authority
 - Australian Capital Territory Public Cemeteries Authority
 - Australian Capital Tourism Corporation
 - Building and Construction Industry Training Fund Authority
 - Canberra Institute of Technology
 - Cleaning Industry Long Service Leave Authority
 - Construction Industry Long Service Leave Authority
 - Cultural Facilities Corporation

- Exhibition Park Corporation
 - Independent Competition and Regulatory Commission for the Australian Capital Territory
 - Land Development Agency
 - Legal Aid Commission (A.C.T.)
 - Public Trustee for the Australian Capital Territory
 - Stadiums Authority
 - University of Canberra.
- (2) This part also applies to a territory authority prescribed by the financial management guidelines.

55 Responsibilities of chief executive officers of territory authorities

- (1) This section applies to a territory authority if the authority does not have a governing board.

Note Section 76 (2) sets out the territory authorities that have governing boards.

- (2) The chief executive officer of the territory authority is responsible, under the responsible Minister, for the efficient and effective financial management of the authority.
- (3) Without limiting subsection (2), the chief executive officer of the territory authority is responsible, under the responsible Minister, for ensuring the following:
- (a) that the expenses incurred by the authority are properly authorised;
 - (b) that, if an appropriation is made in relation to the authority, any amount of the appropriation spent by the authority is spent in accordance with the appropriation;
 - (c) that, as far as practicable, the operations of the authority during a financial year are consistent with, and comparable to, the estimates in the authority's statement of intent for the year.

- (d) that payments made by the authority are properly authorised and correctly made;
- (e) that the staff of the authority comply with the requirements of this Act;

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including in this case the financial management guidelines (see Legislation Act, s 104).

- (f) that proper accounts and records are kept of the transactions and affairs of the authority in accordance with generally accepted accounting principles;
 - (g) that adequate control is maintained over the assets of the authority and assets under the authority's control;
 - (h) that adequate control is maintained over the incurring of liabilities by the authority.
- (4) A report prepared by the territory authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include an explanation of material variations between the actual results of the authority for the year and the estimates in the authority's statement of intent for the year.

56 Responsibilities of governing boards of territory authorities

- (1) This section applies to a territory authority if the authority has a governing board.

Note Section 76 (2) sets out the territory authorities that have governing boards.

- (2) The governing board of the territory authority is responsible, under the responsible Minister, for the efficient and effective financial management of the authority.

-
- (3) Without limiting subsection (2), the governing board of the territory authority is responsible, under the responsible Minister, for ensuring the following:
- (a) that expenses incurred by the authority are properly authorised;
 - (b) that, if an appropriation is made in relation to the authority, any amount of the appropriation spent by the authority is spent in accordance with the appropriation;
 - (c) that, as far as practicable, the operations of the authority during a financial year are consistent with, and comparable to, the estimates in the authority's statement of intent for the year;
 - (d) that payments made by the authority are properly authorised and correctly made;
 - (e) that the staff of the authority comply with the requirements of this Act;
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including in this case the financial management guidelines (see Legislation Act, s 104).
- (f) that proper accounts and records are kept of the transactions and affairs of the authority in accordance with generally accepted accounting principles;
 - (g) that adequate control is maintained over the assets of the authority and assets under the authority's control;
 - (h) that adequate control is maintained over the incurring of liabilities by the authority.
- (4) A report prepared by the territory authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include an explanation of material variations between the actual results of the authority for the year and the estimates in the authority's statement of intent for the year.

57 Banking accounts of territory authorities

- (1) A territory authority may open 1 or more banking accounts for the purposes of the authority.
- (2) A territory authority must at all times keep at least 1 banking account.
- (3) A banking account of a territory authority must not, without the Treasurer's written approval, be opened or kept otherwise than with an authorised deposit-taking institution with which an agreement is in force under section 32 (Agreement for the conduct of banking for Territory).

58 Investment by territory authorities

- (1) Funds not immediately required for the purposes of a territory authority may be invested—
 - (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 authority, in an investment mentioned in section 38 (1) (a) to (e); or
 - (d) in an investment prescribed for this paragraph.
- (2) However, the funds of the territory authority may only be invested under this section to increase or protect the financial wealth of the authority.
- (3) Transfers between the territory banking account and the banking account of a territory authority to facilitate investments may be made without appropriation.
- (4) Interest received by the Treasurer for the investment of funds of a territory authority must be paid to the territory authority.

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- (5) However, if an investment of funds of a territory authority is made or managed by a department, the department may deduct from the interest received by the department for the investment—
 - (a) a fee charged by the department for making or managing the investment; and
 - (b) expenses reasonably incurred by the department in making or managing the investment.
 - (6) Interest that is to be paid to a territory authority under subsection (4) may be paid direct to the territory authority or through the territory banking account.
 - (7) If interest to be paid to a territory authority is paid into the territory banking account under subsection (6), the interest may be paid to the authority from that account without further appropriation.
 - (8) This section does not apply to money held on trust by a territory authority.

59 Borrowing by territory authorities

- (1) The Treasurer may, on the terms and conditions the Treasurer considers appropriate—
 - (a) borrow money for a territory authority; or
 - (b) lend public money to a territory authority.
- (2) A borrowing may be secured by the territory authority's assets approved by the Treasurer for this section.
- (3) A territory authority may arrange an overdraft or credit facility only with the written approval of the Treasurer.
- (4) A loan under subsection (1) (b) may be made only from—
 - (a) money appropriated for the purpose of making the loan; or
 - (b) money appropriated for purposes that include the purpose of making the loan.

- (5) However, subsection (4) does not apply to an overdraft or credit facility for a territory authority from the territory banking account that is approved, in writing, by the Treasurer for the authority.
- (6) The Treasurer may approve an overdraft or credit facility for a territory authority under subsection (5) only if satisfied that it is for a purpose consistent with a function of the authority.
- (7) An approval under subsection (5) must state, for the overdraft or credit facility—
 - (a) each purpose for which it may be used; and
 - (b) the maximum amount that may be outstanding at any time; and
 - (c) conditions about—
 - (i) the repayment of principal; and
 - (ii) the interest rate; and
 - (iii) the repayment of interest.
- (8) An approval under subsection (5) may also state any other condition that the Treasurer requires.
- (9) An approval under subsection (5) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (10) An overdraft or credit facility approved under subsection (5) must be reviewed annually by the Treasurer.

60 Guarantees by territory authorities

A territory authority may only give a guarantee with the written approval of the Treasurer.

61 Territory authority statements of intent

- (1) A territory authority must give the Treasurer a statement (a *statement of intent*) for each financial year.

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- (2) A territory authority must consult the responsible Minister in preparing a statement of intent.
 - (3) A territory authority must show the responsible Minister a copy of the proposed statement of intent, and take into consideration any comment by the Minister, before giving it to the Treasurer.
 - (4) A statement of intent must be—
 - (a) in the form the Treasurer requires; and
 - (b) as agreed between the relevant person for the authority and the Treasurer; and
 - (c) provided to the Treasurer within the period the Treasurer requires.
 - (5) A statement of intent for a financial year must include the following:
 - (a) the financial statements required under the financial management guidelines;
 - (b) a statement of the objectives of the authority for the year, and each of the next 3 financial years;
 - (c) a statement of the nature and scope of the activities to be carried out by the authority during the year, and each of the next 3 financial years;
 - (d) the performance criteria and other measures by which the performance of the authority may be assessed against its objectives for the year, and each of the next 3 financial years;
 - (e) an assessment of the performance (or estimated performance) of the authority in the previous financial year against its objectives for that year;
 - (f) the results of any review under section 59 (10) in the previous financial year of an overdraft or credit facility approved for the authority;
 - (g) any other information the Treasurer directs.

(6) In this section:

relevant person, for a territory authority, means—

- (a) if the authority has a governing board—the chair of the governing board; or
- (b) if the authority does not have a governing board—the chief executive officer.

62 Presentation of statements of intent of territory authorities

- (1) The Treasurer must present to the Legislative Assembly, with the budget papers for a financial year, a statement of intent for each territory authority for the year.
- (2) If the Treasurer does not present to the Legislative Assembly, with the budget papers for a financial year, a statement of intent for a territory authority, the Treasurer must—
 - (a) as soon as practicable after the budget papers are presented, explain to the Legislative Assembly why the statement of intent was not presented; and
 - (b) present the statement of intent to the Legislative Assembly as soon as practicable after presenting the budget papers.

63 Annual financial statements of territory authorities

- (1) As soon as practicable after the end of each financial year, each territory authority must prepare annual financial statements for its operations during the year.
- (2) The annual financial statements must be prepared in accordance with generally accepted accounting principles and in a form that facilitates a comparison between the financial operations of the territory authority during the financial year and the estimates of the operations in the authority's statement of intent for the year.

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- (3) The annual financial statements must include—
- (a) the financial statements required under the financial management guidelines; and
 - (b) if a change was made during the year to the conditions of a capital injection set out under section 12A (1) (c) (ii) (Territory authority and territory-owned corporation budgets) in a statement included in a proposed budget for the authority for a financial year—a statement of the change and the reasons for it; and
 - (c) any other statement necessary to fairly reflect the financial operations of the authority during the year and its financial position at the end of the year.

64 Responsibility for annual financial statements of territory authorities

- (1) The annual financial statements of a territory authority for a financial year must have endorsed on them, or attached to them, a statement of responsibility signed by the relevant person for the authority.
- (2) The statement of responsibility must—
 - (a) include a statement of the relevant person’s responsibility for the preparation of the annual financial statements and the judgments exercised in preparing them; and
 - (b) state that, in the relevant person’s opinion, the financial statements fairly reflect the financial operations of the authority during the financial year and the financial position of the authority at the end of the year.

(3) In this section:

relevant person, for the territory authority, means—

- (a) if the authority has a governing board—the chair of the governing board; or
- (b) if the authority does not have a governing board—the chief executive officer.

65 Audit of annual financial statements of territory authorities

- (1) The chief executive officer of a territory authority must give the auditor-general the annual financial statements of the authority for a financial year within the prescribed period after the end of the year.
- (2) The financial statements given to the auditor-general must have endorsed on them, or attached to them, the statement of responsibility made for them under section 64.
- (3) The auditor-general must give the chief executive officer an audit opinion about the financial statements as soon as practicable after the auditor-general receives them.

66 Annual financial statements of territory authorities to be included in annual reports etc

A report prepared under the *Annual Reports (Government Agencies) Act 2004* for a territory authority for a financial year must include, or have attached to it—

- (a) the authority's annual financial statements for the year; and
- (b) the audit opinion under section 65 (3) about the financial statements.

67 Treasurer may require interim financial statements etc for territory authorities

- (1) The Treasurer may, in writing, direct the relevant person for a territory authority to give the responsible Minister of the authority and the Treasurer financial or other statements relating to the authority for each month, quarter or other stated period of the year.
- (2) The relevant person must prepare the statements required by the direction and give them to the responsible Minister and Treasurer within 1 month after the day the person receives the direction or, if a longer period for compliance is stated in the direction, within the longer period.
- (3) In this section:
relevant person, for a territory authority, means—
 - (a) if the authority has a governing board—the chair of the governing board; or
 - (b) if the authority does not have a governing board—the chief executive officer.

68 Statements of performance of territory authorities

- (1) As soon as practicable after the end of each financial year, each territory authority must prepare a statement of the performance of the authority in meeting the objectives in the authority's statement of intent for the year.
- (2) The statement must assess the performance by reference to the performance criteria and other measures included in the statement of intent in accordance with section 61 (5) (d).

- (3) For a prescribed territory authority, the statement must also include a statement of the performance of the authority in providing each class of outputs provided by it during the year and, in particular—
 - (a) compare the performance of the territory authority in providing each class of the outputs with the forecast of the performance in the authority's budget for the year; and
 - (b) give particulars of the extent to which the performance criteria set out in the budget for the provision of the outputs were met.
- (4) In this section:

budget, for the territory authority, means the budget for the authority for the financial year presented to the Legislative Assembly under section 10 (c) (Budget papers) and, if that budget has been amended under this Act, the budget as amended.

prescribed territory authority means a territory authority prescribed for section 12A (1) (b) (Territory authority and territory-owned corporation budgets).

69 Responsibility for territory authority statements of performance

- (1) A statement of performance of a territory authority for a financial year must have endorsed on it, or attached to it, a statement of responsibility signed by the relevant person for the authority.
- (2) The statement of responsibility must—
 - (a) include a statement of the relevant person's responsibility for the preparation of the statement of performance and the judgments exercised in preparing them; and
 - (b) state that, in the relevant person's opinion, the statement of performance fairly reflects the performance of the authority during the financial year.

(3) In this section:

relevant person, for the territory authority, means—

- (a) if the authority has a governing board—the chair of the governing board; or
- (b) if the authority does not have a governing board—the chief executive officer.

70 Scrutiny of territory authority statements of performance

- (1) The chief executive officer of a territory authority must give the auditor-general the authority's statement of performance for a financial year within the prescribed period after the end of the year.
- (2) The statement of performance given to the auditor-general must have endorsed on it, or attached to it, the statement of responsibility made for it under section 69.
- (3) The auditor-general must give the chief executive officer a report about the statement of performance as soon as practicable after the auditor-general receives it.
- (4) The report must be prepared in accordance with the financial management guidelines.

71 Territory authority statements of performance to be included in annual reports etc

A report prepared under the *Annual Reports (Government Agencies) Act 2004* for a territory authority for a financial year must include, or have attached to it—

- (a) the authority's statement of performance for the year; and
- (b) the auditor-general's report under section 70 (3) about the statement of performance.

39 Part 9

renumber as part 10

40 Sections 64 to 68

renumber as sections 104 to 108

41 New part 9

insert

Part 9 Governance of territory authorities

Notes for pt 9

Note 1 Div 9.1 and div 9.5 apply to a territory authority, whether or not it has a governing board, unless the establishing Act otherwise provides (see eg the *Legal Aid Act 1977*, s 94A).

Note 2 The Legislation Act contains provisions relevant to territory authorities, including the following:

- making appointments (s 206, s 207)
- consultation with a committee of the Legislative Assembly (div 19.3.3)
- eligibility for reappointment (s 208 and dict, pt 1, def *appoint*)
- acting appointments (s 209)
- resignations (s 210)
- effect of appointment irregularity or defect (s 212).

Note 3 The *Remuneration Tribunal Act 1995* allows terms and conditions for people appointed to be set by determination under that Act.

Division 9.1 Definitions and important concepts

72 Definitions—pt 9

In this part:

applicable governmental policies, for a territory authority—see section 103.

establishing Act, for a territory authority, governing board or governing board member, means the Act that establishes the authority or governing board.

financial year, for a territory authority, means—

- (a) a period of 12 months beginning on 1 July; or
- (b) if the territory authority has, in writing, fixed another 12-month period as its financial year—the period fixed.

governing board member, for a territory authority with a governing board, includes the CEO.

material interest—see section 88 (4).

relevant territory authority—a territory authority to which part 8 applies is a *relevant territory authority*, unless the establishing Act for the authority provides otherwise.

73 Nature of relevant territory authorities

- (1) A relevant territory authority—
 - (a) is a corporation; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (2) A relevant territory authority represents the Territory when exercising its functions, unless the establishing Act for the authority or another territory law otherwise provides.

- (3) A relevant territory authority has the same status, privileges and immunities as the Territory so far as it represents the Territory.

74 Powers of territory authorities generally

- (1) A relevant territory authority has the legal capacity and powers of an individual both in and outside the ACT (including outside Australia).

Examples

- 1 to enter into a contract
- 2 to own, deal with and dispose of property
- 3 to act as trustee

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) Without limiting subsection (1), a relevant territory authority—
- (a) has the powers given to it under this Act or another territory law; and
 - (b) may do anything that it is authorised to do by a territory law or a law of another jurisdiction; and
 - (c) may exercise its powers in and outside the ACT (including outside Australia).

Example for par (b)

A territory authority may arrange for the authority to be registered or recognised under a law of another jurisdiction.

- (3) A relevant territory authority's legal capacity to do something is not affected by the fact that the authority's interests are not, or would not be, served by doing it.
- (4) To remove any doubt, this section does not—
- (a) authorise a relevant territory authority to do anything that is prohibited by a territory law or a law of another jurisdiction; and

(b) give a relevant territory authority a right that a territory law or a law of another jurisdiction denies to the authority.

(5) In this section:

another jurisdiction means the Commonwealth, a State, another Territory or a foreign country.

75 Execution of documents and assumptions people dealing with relevant territory authority may make

(1) In this section:

applied Corporations Act provisions means the following provisions of the Corporations Act:

(a) section 127 (which is about the execution of documents by a company);

(b) section 128 (which is about a person's entitlement to make certain assumptions in dealing with a company);

(c) section 129 (which is about the assumptions that may be made).

(2) The applied Corporations Act provisions apply to a relevant territory authority as if—

(a) a reference to a *company* were a reference to the authority; and

(b) a reference to a *common seal* were a reference to any seal of the authority; and

(c) a reference to a *director* were a reference to a board member; and

(d) a reference to a company's *constitution* were a reference to this Act and the establishing Act; and

(e) a reference to an *officer* of a company were a reference to the chief executive officer and any member of staff of the authority; and

- (f) a reference to *information available to the public from ASIC* were a reference to information available to the public from the Territory; and
- (g) any other necessary changes, and any change prescribed by regulation, were made.

76 Governing board of territory authority

- (1) A territory authority has a governing board if the establishing Act for the authority establishes a governing board for the authority.
- (2) To remove any doubt, only the following territory authorities have governing boards:
 - ACT Gambling and Racing Commission
 - ACT Health Promotion Authority
 - ACTION Authority
 - Australian Capital Territory Public Cemeteries Authority
 - Australian Capital Tourism Corporation
 - Building and Construction Industry Training Fund Authority
 - Cleaning Industry Long Service Leave Authority
 - Construction Industry Long Service Leave Authority
 - Cultural Facilities Corporation
 - Exhibition Park Corporation
 - Land Development Agency
 - Stadiums Authority
 - a territory authority prescribed by the financial management guidelines.

77 Role of governing board

- (1) If a territory authority has a governing board, the governing board has the following functions:
 - (a) setting the authority's policies and strategies;

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- (b) governing the authority consistently with the authority's establishing Act and other relevant legislation;
 - (c) ensuring, as far as practicable, that the authority operates in a proper, effective and efficient way;
 - (d) ensuring, as far as practicable, that the authority complies with applicable governmental policies (if any).

Examples of policies for par (a)

- 1 risk management
- 2 communication with government
- 3 corporate planning

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) This section does not limit the functions of a governing board.

Division 9.2 Governing board member appointments

78 Appointment of governing board members generally

- (1) This section applies to the appointment of the members of the governing board of a territory authority, other than the CEO.
- (2) The responsible Minister for the territory authority may appoint the members.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) The only criteria for deciding whether to appoint a person as a member are—
 - (a) the contribution the person can make to the goals and objectives of the governing board; and
 - (b) the criteria stated in applicable governmental policies (if any) relating to appointments.
- (4) However, the establishing Act may prescribe other criteria for deciding whether to appoint a person as a member.
- (5) An appointment of a member—
 - (a) must not be for longer than 3 years, unless the establishing Act allows a longer period; and
 - (b) is an appointment under the provision of the establishing Act that establishes the governing board.
- (6) The conditions of appointment of a member (other than a member required under the establishing Act to be a public servant or statutory office holder) are the conditions agreed between the Minister and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

79 Appointment of chair and deputy chair

- (1) The responsible Minister for a territory authority with a governing board may appoint a chair for the board and, unless the establishing Act otherwise provides, a deputy chair for the board.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

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- (2) However, the responsible Minister must not appoint the CEO of the territory authority as chair or deputy chair.
 - (3) The responsible Minister must try to ensure that the governing board of a territory authority always has a chair and, unless the establishing Act otherwise provides, deputy chair.

80 Appointment of CEO of authority with governing board

- (1) This section applies to a territory authority with a governing board.
- (2) The governing board of the territory authority must, after consulting the responsible Minister, appoint a CEO for the authority.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (3) However, if the CEO is required under the establishing Act to be a public servant, the chief executive of the administrative unit responsible for the establishing Act must, after consulting the governing board and the responsible Minister, appoint a CEO for the authority.
- (4) The CEO is a member of the governing board.
- (5) However, the CEO is not a member of the governing board if it is considering or deciding—
 - (a) the appointment, or the ending of the appointment, of the CEO;
or
 - (b) the CEO's conditions of appointment.
- (6) The conditions of appointment of a CEO (other than a CEO required under the establishing Act to be a public servant) are the conditions agreed between the governing board and the CEO, subject to any determination under the *Remuneration Tribunal Act 1995*.

81 Ending board member appointments

- (1) This section applies to a governing board member other than the CEO.
- (2) The responsible Minister may end the member's appointment—
 - (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (f) if the member exercises the member's functions other than in accordance with section 85 (Honesty, care and diligence of governing board members); or
 - (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
 - (h) if the member contravenes section 88 (Disclosure of interests by governing board members); or
 - (i) if the member is absent from 3 consecutive meetings of the board, otherwise than on approved leave; or
 - (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

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- (3) The Minister may also end the appointment of the member (the *member concerned*) if the board tells the Minister in writing that it has resolved, by a majority of at least $\frac{2}{3}$ of the members, to recommend to the Minister that the member's appointment be ended.
- (4) The governing board may pass a resolution mentioned in subsection (3) only if—
- (a) at least 3 weeks written notice of the intention to consider the proposed resolution has been given to the member concerned; and
 - (b) the member concerned has been given an opportunity to make submissions and present documents to a meeting of the board; and
 - (c) if the member concerned has used the opportunity mentioned in paragraph (b)—a summary of the member's submissions is recorded in the minutes of the board and a copy of any documents presented is included in the minutes.

Division 9.3 Functions of governing board members

82 Chair's functions

The chair of the governing board of a territory authority has the following functions:

- (a) managing the affairs of the governing board;
- (b) ensuring, as far as practicable, that there is a good working relationship between the governing board and management of the authority;
- (c) ensuring the responsible Minister is kept informed about the operations of the authority.

83 Deputy chair's functions

- (1) If the chair of the governing board of a territory authority is absent or cannot for any reason exercise the functions of the chair, the deputy chair of the governing board must exercise the functions of the chair.
- (2) However, this section does not apply to a territory authority if the establishing Act for the authority provides that it need not have a deputy chair.

Note The Legislation Act, s 209 deals with acting appointments.

84 CEO's functions

- (1) The CEO of a territory authority with a governing board has the following functions:

- (a) ensuring, as far as practicable, that the authority's statement of intent is implemented effectively and efficiently;

Example of implementation of statement of intent

achieving objectives in statement of intent

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).

- (b) managing the day-to-day operations of the authority in accordance with—
 - (i) applicable governmental policies (if any); and
 - (ii) the policies of the authority set by the board; and
 - (iii) each legal requirement that applies to the authority;

Example for par (iii)

a direction by the independent competition and regulatory commission that relates to the authority

- (c) regularly advising the board about the operation and financial performance of the authority;

(d) immediately advising the board about significant events.

(2) In this section:

significant event, for a territory authority, means an event that the authority is required to tell the responsible Minister about under section 101.

85 Honesty, care and diligence of governing board members

In exercising the functions of a governing board member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

86 Conflicts of interest by governing board members

A governing board member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

87 Agenda to require disclosure of interest item

The agenda for each meeting of a territory authority governing board must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

88 Disclosure of interests by governing board members

(1) If a governing board member has a material interest in an issue being considered, or about to be considered, by the governing board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note *Material interest* is defined in s (4). The definition of *indirect interest* in s (4) applies to the definition of *material interest*.

- (2) The disclosure must be recorded in the governing board's minutes and, unless the board otherwise decides, the member must not—
- (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.

Example

Albert, Boris and Chloe are members of a governing board. They have an interest in an issue being considered at a governing board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris's interests are minor but Chloe has a direct financial interest in the issue.

The governing board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, since Chloe has a material interest she cannot be present for the consideration of the issue or take part in the decision.

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).

- (3) Any other governing board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).
- (4) In this section:
- associate***, of a person, means—
- (a) the person's business partner; or
 - (b) a close friend of the person; or
 - (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an **indirect interest** in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a governing board member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

89 Reporting of disclosed governing board interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 88 (1), the chair of the governing board must report to the responsible Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the board under section 88 (2).
- (2) The chair must also give the responsible Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The responsible Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:
relevant committee means—
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

90 Protection of governing board members from liability

- (1) A governing board member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.

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- (2) Any liability that would, apart from this section, attach to a governing board member of a territory authority attaches instead to the authority.

91 Indemnification and exemption of governing board members

- (1) A territory authority must not exempt a governing board member (whether directly or through another entity) from liability to the authority.
- (2) A territory authority must not indemnify a governing board member (whether directly or through another entity and whether by agreement or by making a payment) against any of the following liabilities incurred as a board member:
- (a) a liability owed to the authority;
 - (b) a liability owed to someone other than the authority that did not arise from honest conduct.
- (3) A territory authority must not indemnify a governing board member (whether directly or through another entity and whether by agreement or by making a payment) against legal costs incurred as a member if the costs are incurred—
- (a) in defending or resisting a proceeding if the person is found to have a liability for which the person could not be indemnified under subsection (2); or
- Note* A governing board member is not personally liable for certain acts done or omissions made honestly and without recklessness (see s 90).
- (b) in defending or resisting a criminal proceeding in which the person is found guilty.
- (4) In this section:
- authority*** includes a subsidiary (if any) of the authority.

92 Compensation for exercise of functions etc

- (1) A person may claim compensation from the Territory if the person suffers loss because of the exercise, or purported exercise, of a function under this part or the establishing Act.
- (2) Compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Division 9.4 Governing board meetings

93 Time and place of governing board meetings

- (1) Meetings of the governing board of a territory authority are to be held when and where it decides.
- (2) However, the governing board must meet—
 - (a) at least once every 3 months; or
 - (b) if the establishing Act requires the governing board to meet more frequently—at the times required under the establishing Act.
- (3) The chair—
 - (a) may at any time call a meeting of the governing board; and
 - (b) must call a meeting if asked by the Minister or at least 2 members.
- (4) The chair must give the other members reasonable notice of the time and place of a meeting called by the chair.

94 Presiding member at governing board meetings

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent and the governing board has a deputy chair, the deputy chair presides.
- (3) If the chair and the deputy chair are absent or the chair is absent and there is no deputy chair, the member chosen by the members present presides.
- (4) However, the members must not choose the CEO to preside.

95 Quorum at governing board meetings

- (1) Business may be carried on at a meeting of the governing board only if at least $\frac{1}{2}$ the number of members appointed are present.
- (2) However, if the establishing Act for the governing board provides that a board member is a non-voting member, that board member is not counted as a member appointed or present for subsection (1).

96 Voting at governing board meetings

- (1) At a meeting of the governing board each member has a vote on each question to be decided, unless the establishing Act for the board otherwise provides.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

97 Conduct of governing board meetings etc

- (1) The governing board may conduct its proceedings (including its meetings) as it considers appropriate.

- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

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).

- (3) A governing board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the governing board, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication.

Example of electronic communication

email

- (5) The board must keep minutes of its meetings.

Division 9.5 Requirements and obligations for territory authorities

98 Limitations on authorities forming corporations etc

- (1) A relevant territory authority must not do any of the following without the Treasurer's prior written approval:
- (a) subscribe for, or purchase, shares in or debentures or other securities of, a corporation;
 - (b) form, or take part in the formation of, a corporation.
- (2) An approval under subsection (1)—
- (a) must relate only to a particular corporation or proposed corporation; and

-
- (b) may be given subject to the conditions or restrictions stated in the approval.
 - (3) If a relevant territory authority does something mentioned in subsection (1), the authority must tell the responsible Minister within 2 weeks after the day the authority does the thing.
 - (4) The responsible Minister must—
 - (a) prepare a written statement setting out details of, and reasons for, the relevant territory authority's action; and
 - (b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the action.
 - (5) A statement need not include any material that is commercially sensitive.
 - (6) However, if commercially sensitive information is not included in the statement, the responsible Minister must, when presenting the statement to the Legislative Assembly, also present a further statement setting out the general nature of the information and the reason for its non-inclusion in the statement.

99 Limitations on authorities taking part in joint ventures and trusts

- (1) A relevant territory authority must not take part in a joint venture or trust without the Treasurer's prior written approval.
- (2) An approval under subsection (1)—
 - (a) may apply generally or may relate to a particular proposed joint venture or trust; and
 - (b) may be given subject to the conditions or restrictions stated in the approval.
- (3) If a relevant territory authority enters into an agreement for a joint venture or trust, the authority must tell the responsible Minister within 2 weeks after the day the authority enters into the agreement.

- (4) The responsible Minister must—
 - (a) prepare a written statement setting out details of, and reasons for, the agreement; and
 - (b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the agreement.
- (5) A statement need not include any material that is commercially sensitive.
- (6) However, if commercially sensitive information is not included in the statement, the responsible Minister must, when presenting the statement to the Legislative Assembly, also present a further statement setting out the general nature of the information and the reason for its non-inclusion in the statement.

100 Corporations, joint ventures and trusts in which authority has interest

- (1) If a relevant territory authority has a controlling interest in a corporation, joint venture or trust, the authority must ensure that—
 - (a) the auditor-general is appointed auditor for the corporation, joint venture or trust; and
 - (b) the corporation or joint venture, or a trustee for the trust, does not do anything that the authority itself could not do.
- (2) If a relevant territory authority has an interest, other than a controlling interest, in a corporation, joint venture or trust, the authority must try to ensure that the auditor-general is appointed auditor for the corporation, joint venture or trust.

Note The *Auditor-General Act 1996*, s 14 allows the auditor-general to require a person to give to the auditor-general information and documents.

- (3) In this section—

controlling interest—see the *Auditor-General Act 1996*, section 5.

101 Obligation of authorities to tell Minister about significant events

- (1) A relevant territory authority must, as soon as practicable, tell the responsible Minister of any significant event that affects, or seems likely to affect—
- (a) the value of the authority; or
 - (b) a significant part of the authority's assets; or
 - (c) the performance of the authority as a whole; or
 - (d) the carrying out of a significant activity of the authority.
- (2) For this section, an event, part of assets or activity is *significant* for a relevant territory authority if—
- (a) it is significant when interpreted in accordance with accounting standards relating to materiality ordinarily used in Australia when the decision about whether it is significant is made; or
 - (b) a document published by the authority identifies it as significant (however described); or
 - (c) a memorandum of understanding or other agreement between the responsible Minister or Treasurer and the authority identifies it as significant (however described); or
 - (d) it is prescribed under the financial management guidelines.

102 Ministerial directions to authorities about financial etc statements

- (1) The responsible Minister for a relevant territory authority may, in writing, direct the relevant person for the authority to give the Minister financial or other statements relating to the authority.

- (2) Without limiting subsection (1), the direction may state the form in which the statements are to be given and the period to which they must relate.
- (3) A relevant person for a relevant territory authority who receives a direction under subsection (1) must prepare the statements required by the direction and give them to the responsible Minister within 1 month after the day the person receives the direction or, if a longer period is allowed by the Minister, within the longer period.
- (4) The responsible Minister must not allow a longer period under subsection (3) for complying with a direction unless satisfied that there are special circumstances that justify the longer period.
- (5) In this section:
relevant person, for a relevant territory authority, means—
 - (a) if the authority has a governing board—the chair of the governing board; or
 - (b) if the authority does not have a governing board—the chief executive officer.

103 Application of government policies to authorities

- (1) The responsible Minister for a relevant territory authority may, after consulting the authority, tell the authority, in writing, the general government policies (*applicable governmental policies*) that are to apply to the authority.
- (2) A relevant territory authority must ensure that the authority complies, as far as practicable, with the applicable governmental policies.
- (3) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
 - (a) the decision to apply applicable governmental policies to an authority; and

- (b) the doing of, or the failure to do, anything by or in relation to the authority to comply with applicable governmental policies.
- (4) A notice under subsection (1) is a notifiable instrument.

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

42 New part 11

insert

Part 11 Transitional

109 Financial Management Legislation Amendment Act 2005—provisions with 1 July 2005 application

- (1) The 1 July 2005 sections, as in force immediately after the commencement of this section, apply in relation to the financial year that commenced on 1 July 2005 and all subsequent financial years.
- (2) In its application in relation to the financial year that commenced on 1 July 2005, section 68, as in force immediately after the commencement of this section, applies as if the reference in subsection (3) to section 61 (5) (d) included a reference to section 55 (3) (d).
- (3) In this section:

1 July 2005 sections means the following sections:

- section 12 (Departmental budgets)
- section 13 (Supplementary budget papers)
- section 13A (Amendment of budgets for supplementary appropriation)
- section 22 (Annual financial statements of the Territory)
- section 23 (Responsibility for annual financial statements)
- section 24 (Audit of annual financial statements)
- section 27 (Annual financial statements of departments)

- section 28 (Responsibility for annual financial statements of departments)
 - section 29 (Audit of financial statements of departments)
 - section 30 (Departmental annual financial statements to be included in annual reports etc)
 - section 30A (Statements of performance of departments)
 - section 30B (Responsibility for departmental statements of performance)
 - section 30C (Scrutiny of departmental statements of performance)
 - section 30D (Departmental statements of performance to be included in annual reports etc)
 - section 30E (Half-yearly departmental performance reports)
 - section 31 (Responsibilities of chief executives of departments)
 - section 63 (Annual financial statements of territory authorities)
 - section 64 (Responsibility for annual financial statements of territory authorities)
 - section 65 (Audit of annual financial statements of territory authorities)
 - section 66 (Annual financial statements of territory authorities to be included in annual reports etc)
 - section 68 (Statements of performance of territory authorities)
 - section 69 (Responsibility for territory authority statements of performance)
 - section 70 (Scrutiny of territory authority statements of performance)
 - section 71 (Territory authority statements of performance to be included in annual reports etc).
- (4) This section expires 1 year after the day it commences.

110 Financial Management Legislation Amendment Act 2005—provisions with 1 July 2006 application

- (1) The 1 July 2006 sections, as in force immediately after the commencement of this section, apply in relation to the financial year commencing on 1 July 2006 and all subsequent financial years.
- (2) Despite the amendments of this Act made by the *Financial Management Legislation Amendment Act 2005*, the following sections, as in force immediately before the commencement of this section, continue to apply in relation to the financial year that commenced on 1 July 2005:
 - section 10 (Budget papers)
 - section 58 (Statements of intent).
- (3) In this section:

1 July 2006 sections means the following sections:

 - section 10 (Budget papers)
 - section 12A (Territory authority and territory-owned corporation budgets)
 - section 61 (Territory authority statements of intent)
 - section 62 (Presentation of statements of intent of territory authorities).
- (4) This section expires on the expiry of section 109.

111 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Financial Management Legislation Amendment Act 2005*.
- (2) A regulation may modify this part (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately or appropriately, dealt with in this part.

- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

43 Dictionary, note 2 new dot points

insert

- Act
- exercise
- function
- GST
- person.

44 Dictionary, new definition of *applicable governmental policies*

insert

applicable governmental policies, for a territory authority, for part 9 (Governance of territory authorities)—see section 103.

45 Dictionary, definition of *capital injection*

substitute

capital injection means an amount provided, or to be provided, to a department, a territory authority or a territory-owned corporation for—

- (a) the purchase of assets to be held by the department or to be owned by the authority or corporation; or
- (b) the development of assets held by the department or owned by the authority or corporation; or
- (c) augmenting the assets held by the department or owned by the authority or corporation; or

(d) reducing the liabilities of the department, the authority or the corporation;

but does not include an amount provided from an appropriation for a purpose mentioned in section 8 (1) (a) or (c) or (2) (a).

46 Dictionary, new definition of *CEO*

insert

CEO—see *chief executive officer*.

47 Dictionary, definition of *chief executive officer*

substitute

chief executive officer (or *CEO*), of a territory authority, means the person (however described) who is responsible for managing the affairs of the authority.

48 Dictionary, new definitions

insert

establishing Act, for a territory authority, governing board or governing board member, for part 9 (Governance of territory authorities)—see section 72.

financial year, for a territory authority, for part 9 (Governance of territory authorities)—see section 72.

49 Dictionary, definition of *generally accepted accounting practice*

substitute

generally accepted accounting principles means accounting principles and procedures that are—

- (a) recognised by the accounting profession as appropriate for reporting financial information relating to government, a department or a territory authority; and
- (b) consistent with this Act and any relevant Appropriation Act.

50 Dictionary, new definitions

insert

governing board, for a territory authority, means the governing board for the authority mentioned in section 76.

governing board member, for a territory authority with a governing board for part 9 (Governance of territory authorities)—see section 72.

51 Dictionary, definition of *GST*

omit

52 Dictionary, new definition of *material interest*

insert

material interest, for part 9 (Governance of territory authorities)—see section 88 (4).

53 Dictionary, definition of *public trading enterprise*

omit

54 Dictionary, new definition of *relevant territory authority*

insert

relevant territory authority, for part 9 (Governance of territory authorities)—see section 72.

55 Dictionary, definition of *responsible Minister*, paragraph (c)

substitute

- (c) in relation to a territory authority—the Minister administering the Act under which the authority is established; and
- (d) in relation to a territory-owned corporation—the Minister administering the *Territory-owned Corporations Act 1990*.

56 Dictionary, definition of *statement of intent*

substitute

statement of intent, for a territory authority—see section 61 (1).

Schedule 1 Amendments of other legislation

(see s 3)

Part 1.1 ACTION Authority Act 2001

[1.1] Part 2 heading, new note

insert

Note for pt 2

The governance of territory authorities, including ACTION Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.2] Division 2.1 heading

substitute

Division 2.1 Establishment and functions of authority

[1.3] Section 4

substitute

4 Establishment of authority

The ACTION Authority (the *authority*) is established.

[1.4] Section 5 (e)

omit

[1.5] Section 5 (f) to (h)

renumber as section 5 (e) to (g)

[1.6] Section 7

substitute

6 Restrictions on dealings with assets

- (1) In this section:
subsidiary means a company that, for the Corporations Act, is a subsidiary of the authority.
- (2) The authority or a subsidiary must not, without the Treasurer's prior written approval—
 - (a) enter into a contract involving the payment or receipt of a total amount larger than \$500 000; or
 - (b) sell or otherwise dispose of, or mortgage or otherwise give security over, a significant asset; or
 - (c) mortgage or give a charge over all, or a significant part, of its undertakings or assets.
- (3) An approval of the Treasurer may be given subject to conditions or restrictions stated in the approval.
- (4) The authority or a subsidiary must not dispose of any of its main undertakings unless the Legislative Assembly has, by resolution, approved the disposal.
- (5) A purported disposal in contravention of subsection (4) is void.

- (6) For this section, an asset, or part of the undertakings or assets, of the authority or a subsidiary is *significant* if—
- (a) it is significant when interpreted in accordance with accounting standards relating to materiality ordinarily used in Australia when the decision about whether it is significant is made; or
 - (b) a document published by the authority or subsidiary identifies it as significant (however described); or
 - (c) a memorandum of understanding or other agreement between the Minister or Treasurer and the authority or subsidiary identifies it as significant (however described); or
 - (d) it is prescribed under the financial management guidelines under the *Financial Management Act 1996* for this section.
- (7) This section is additional to the *Financial Management Act 1996*, part 9 (Governance of territory authorities).

[1.7] Division 2.2

substitute

Division 2.2 Governing board

7 Establishment of governing board

The authority has a governing board.

8 Governing board members

The governing board has at least 5, but not more than 7, members.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the authority is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

9 Term of chief executive officer of authority

The chief executive officer of the authority must not be appointed for a term of longer than 5 years.

Note 1 The governing board must appoint a chief executive officer (see *Financial Management Act 1996*, s 80 (2)).

Note 2 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

[1.8] Division 2.3

omit

[1.9] Part 3 heading

substitute

Part 3 Authority staff

[1.10] Sections 19 and 20

omit

[1.11] Section 21

renumber as section 10

[1.12] Section 22 (3)

substitute

- (3) The authority's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive

officer of an instrumentality is the person who has responsibility for managing its affairs.

[1.13] Section 22 (as amended)

renumber as section 11

[1.14] Parts 4 and 5

substitute

Part 4 Miscellaneous

12 Ministerial directions

- (1) The Minister may give the authority written directions in relation to the exercise of its functions.
- (2) Before giving a direction the Minister must—
 - (a) tell the governing board about the effect of the proposed direction; and
 - (b) give the board a reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comments made by the board.
- (3) The Minister must present a copy of a direction to the Legislative Assembly within 6 sitting days after the day the Minister makes it.
- (4) On receiving a direction under this section, the authority must comply with it.
- (5) The Territory must reimburse the authority for the net reasonable expense of complying with a direction.

- (6) The *net reasonable expense* of complying with a direction is—
- (a) if the direction requires the authority to do something that, apart from the direction, it would not have done—the reasonable cost of, and the estimated revenue foregone in, complying with the direction; or
 - (b) if the direction requires the authority to do something in a way that is different from how the authority had intended to do it—the additional cost incurred, and the estimated revenue foregone, in doing the thing in accordance with the direction; or
 - (c) if the direction requires the authority not to do something that, apart from the direction, it would have done—the difference (if any) between any estimated foregone revenue and the savings resulting from not doing the thing.
- (7) An amount is not payable under subsection (5) unless it is agreed to by the Minister and the authority or, failing agreement, is decided by the Treasurer.

13 Dividends

- (1) If there are profits available for paying a dividend for a financial year, the Treasurer may, after consulting the board, direct the authority to declare a dividend for the year of the amount directed by the Treasurer.
- (2) Within 1 month after the day the authority receives a direction under subsection (1), the authority must declare, and pay the Territory, a dividend in accordance with the direction.
- (3) For this section, *available* profits for a financial year are—
 - (a) the profits for the financial year; and
 - (b) any profits for any previous financial year that have not previously been taken into account in deciding whether a dividend should be declared.

(4) In this section:

profit includes the net proceeds of the sale of assets.

14 Authority's annual report

A report prepared by the authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 12 (Ministerial directions) during the year; and
- (b) a statement by the authority about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

15 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.15] Dictionary

substitute

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:

- exercise
- function.

authority means ACTION Authority.

chief executive officer means the chief executive officer of the authority.

Note The chief executive officer must be appointed under the *Financial Management Act 1996*, s 80.

governing board means the governing board of the authority.

Part 1.2 **Australian Capital Tourism Corporation Act 1997**

[1.16] Section 2, notes

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary 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)).

[1.17] Part 2 heading

substitute

Part 2 **The corporation**

Note for pt 2

The governance of territory authorities, including the corporation, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.18] Division 2.1 heading

substitute

Division 2.1 Establishment and functions of corporation

[1.19] Section 4

substitute

4 Establishment of corporation

The Australian Capital Tourism Corporation (the *corporation*) is established.

[1.20] Section 5, new note

insert

Note A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

[1.21] Sections 6 and 7

omit

[1.22] Division 2.2

substitute

Division 2.2 Governing board

6 Establishment of governing board

The corporation has a governing board.

7 Governing board members

The governing board has 9 members.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

8 Chief executive officer of corporation

The chief executive officer of the corporation must be a public servant.

Note A chief executive officer must be appointed under the *Financial Management Act 1996*, s 80 (3).

[1.23] Division 2.3

omit

[1.24] Part 3 heading

substitute

Part 3 Corporation staff and consultants

[1.25] Division 3.1

omit

[1.26] Division 3.2 heading

omit

[1.27] Section 18

substitute

9 Staff

The corporation's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

[1.28] Section 19 (2)

substitute

- (2) However, the corporation must not enter into a contract of employment under this section.

[1.29] Section 19 (as amended)

renumber as section 10

[1.30] Part 4

omit

[1.31] Part 5

renumber as part 4

[1.32] Section 26

omit

[1.33] Sections 27 and 28

renumber as sections 11 and 12

[1.34] Section 29 (a)

omit

section 27

substitute

section 11

[1.35] Section 29 (as amended)

renumber as section 13

[1.36] Section 30

omit

[1.37] Section 31

renumber as section 14

[1.38] Dictionary

substitute

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:

- exercise
- function.

corporation means the Australian Capital Tourism Corporation.

governing board means the governing board of the corporation.

Part 1.3 Building and Construction Industry Training Levy Act 1999

[1.39] Title

substitute

An Act to impose a levy for improving training in the building and construction industry, and for other purposes

[1.40] Part 2

substitute

Part 2 The authority

Note for pt 2

The governance of territory authorities, including the Building and Construction Industry Training Fund Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

Division 2.1 Establishment and functions of authority

4 Establishment of authority

The Building and Construction Industry Training Fund Authority (the *authority*) is established.

Note If a law changes a name of an entity (like the Building and Construction Industry Training Fund Board), the entity continues in existence under the new name (the Building and Construction Industry Training Fund

Authority) and its identity is not affected by the change (see Legislation Act, s 183).

5 Functions of authority

The authority has the following functions:

- (a) administering the fund;
- (b) making payments, or directing that payments be made, from the fund in accordance with training plans;
- (c) exercising any other function given to the authority under this Act or any other territory law.

Note The Legislation Act, s 196 (1) provides that a provision of an Act that gives an entity (including the board) a function also gives the entity the powers necessary and convenient to exercise the function.

Division 2.2 Governing board

6 Establishment of governing board

The authority has a governing board.

7 Governing board members

- (1) The governing board has 6 members.

Note A chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

- (2) Two of the governing board members must be appointed to represent the interests of employers in the building and construction industry.
- (3) Two of the governing board members must be appointed to represent the interests of employees in the building and construction industry.
- (4) The chair must not be a representative mentioned in subsection (2) or (3).

- (5) The chief executive officer is a non-voting member of the governing board.

Note The *Financial Management Act 1996*, s 95 (2) and s 96 (1) deal with non-voting members of governing boards.

7A Term of chief executive officer of authority

The chief executive officer of the authority must not be appointed for a term of longer than 5 years.

7B No deputy chair

The Minister must not appoint a deputy chair for the governing board.

Note 1 This section ensures that a deputy chair cannot be appointed for the governing board under the *Financial Management Act 1996*, s 79 (1).

Note 2 The Minister may appoint an acting chair (see Legislation Act, s 209).

8 Administration of authority

The governing board may make arrangements with the council, or anyone else, for the provision of—

- (a) administrative or secretarial services to the authority (including the governing board); or
- (b) the administration of the fund in accordance with the directions of the governing board.

[1.41] Sections 17 and 19

omit

board

substitute

authority

[1.42] Section 21

substitute

21 Refund of levy if work not carried out

- (1) This section applies if—
 - (a) training levy has been paid for work before it starts; and
 - (b) the work does not start.
- (2) The authority must refund to the project owner the amount paid within 1 month after the day the authority receives a written request for the refund from the project owner.

[1.43] Sections 22 to 25 and 28 to 30

omit

board

substitute

authority

[1.44] Dictionary, definition of *board*

substitute

authority means the Building and Construction Industry Training Fund Authority.

[1.45] Dictionary, definition of *chairperson*

substitute

chair means the chair of the governing board.

Note The chair must be appointed under the *Financial Management Act 1996*, s 79.

[1.46] Dictionary, new definition of *governing board*

insert

governing board means the governing board of the authority.

[1.47] Dictionary, definition of *member*

omit

Part 1.4 Canberra Institute of Technology Act 1987

[1.48] Section 3 (1), definitions of *appoint, director, joint venture, securities and share*

omit

[1.49] Section 3 (1), definitions (as amended)

relocate to dictionary

[1.50] Section 3, remainder

substitute

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.

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)).

3 Notes

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

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

[1.51] Part 2 heading

substitute

Part 2 Establishment, functions and powers of institute

Note for pt 2

The governance of territory authorities, including the institute, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers.

[1.52] Division 2.1 heading

omit

[1.53] Section 4

substitute

4 Establishment of institute

The Canberra Institute of Technology is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

[1.54] Section 5 (1) (a)

substitute

- (a) to conduct, mainly in the ACT, an educational institution to foster excellence in study in the fields of technical and further education that the director, with the Minister's written approval, decides or the Minister requires; and

[1.55] Section 5 (1) (g)

substitute

- (g) to consult and cooperate with other entities in relation to the provision of technical and further education; and

[1.56] Section 5 (2) to (4)

substitute

- (2) A decision of the director, or a requirement of the Minister, under subsection (1) (a) must be in writing.

[1.57] Section 5 (5) and (6)

renumber as section 5 (3) and (4)

[1.58] New section 6

insert

6 Minister's directions

- (1) The Minister may, in writing, give a direction to the director in relation to the exercise of the institute's functions.
- (2) The institute must comply with any direction of the Minister.

[1.59] Division 2.3

substitute

9 Institute's powers

The institute has the following powers:

- (a) erecting buildings and structures and carrying out works;
- (b) occupying, using and controlling any land or building owned or leased (whether from the Territory or anyone else) and made available to the institute;
- (c) making available, by lease or otherwise, any land or building to anyone else;
- (d) accepting gifts, grants, devises and bequests, whether on trust or otherwise, and acting as trustee of property vested in it on trust;
- (e) providing scholarships and other similar benefits;
- (f) charging for work done and services provided;
- (g) providing consultative services;
- (h) investing in shares in, or debentures or other securities of, a company;
- (i) providing services, facilities or resources to—
 - (i) any company in which it holds shares; or
 - (ii) a member of any partnership it has entered into; or
 - (iii) a member of any joint venture it participates in;
- (j) acting as an agent for other people;
- (k) getting commercial sponsorship;
- (l) establishing and conducting residential facilities for its staff or students either by itself or in association with other entities;

- (m) establishing and maintaining library, museum, art and other collections either by itself or in association with other entities.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

[1.60] Part 3

substitute

Part 3 Director of institute

14 Director

- (1) The Minister must appoint a person as the Director of the institute.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The director must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (3) The conditions of appointment of the director are the conditions agreed between the director and the Minister, subject to any determination under the *Remuneration Tribunal Act 1995*.

15 Ending director's appointment

The Minister may end the director's appointment—

- (a) if the director contravenes a territory law; or
(b) for misbehaviour; or

- (c) if the director becomes bankrupt or executes a personal insolvency agreement; or
- (d) if the director is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
- (e) if the director is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the director exercises the director's functions other than in accordance with section 16 (Honesty, care and diligence of director); or
- (g) if the director fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the director's functions; or
- (h) if the director contravenes section 18 (Disclosure of interests by director); or
- (i) for physical or mental incapacity, if the incapacity substantially affects the exercise of the director's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

16 Honesty, care and diligence of director

In exercising the functions of director, the director must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

17 Conflict of interest

The director must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the director's functions.

18 Disclosure of interests by director

- (1) If the director has a material interest in an issue being considered, or about to be considered, by the director, the director must disclose the nature of the interest to the Minister as soon as practicable after the relevant facts come to the director's knowledge.

Note **Material interest** is defined in s (2). The definition of **indirect interest** in s (2) applies to the definition of **material interest**.

- (2) In this section:

associate, of the director, means—

- (a) the director's business partner; or
- (b) a close friend of the director; or
- (c) a family member of the director.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests the director may have, the director has an **indirect interest** in an issue if any of the following has an interest in the issue:

- (a) an associate of the director;
- (b) a corporation if the corporation has not more than 100 members and the director, or an associate of the director, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the director, or an associate of the director, is an executive officer of the corporation;
- (e) the trustee of a trust if the director, or an associate of the director, is a beneficiary of the trust;

- (f) a member of a firm or partnership if the director, or an associate of the director, is a member of the firm or partnership;
- (g) someone else carrying on a business if the director, or an associate of the director, has a direct or indirect right to participate in the profits of the business.

material interest—the director has a ***material interest*** in an issue if the director has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the director's functions in relation to the Minister's consideration of the issue.

19 Powers of director

- (1) In exercising the director's functions, the director has power to make administrative arrangements or give directions to a member of staff or a student in relation to the following:
 - (a) the management, good government and discipline of the institute;
 - (b) the custody and use of the institute's seal;
 - (c) the admission of people to courses of study or instruction of the institute or to examinations of the institute;
 - (d) the awards (including honorary awards) that may be conferred by the institute and the requirements for their conferral;
 - (e) the granting by the institute of scholarships, bursaries and prizes;
 - (f) the review of progress of students;
 - (g) the provision of loans to any student;

- (h) the provision and management of, and fees or other charges payable for, the use of amenities and services;
- (i) the association or affiliation with the institute of any other entity.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

20 Protection of director from liability

- (1) The director is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to the director attaches instead to the Territory.

[1.61] Section 29 (1), new note

insert

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

[1.62] Section 29 (4)

omit

[1.63] Section 31

omit

[1.64] Section 32

substitute

32 Ending council member appointments

- (1) The Minister may end a member's appointment—
- (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (f) if the member exercises the member's functions other than in accordance with section 34 (Honesty, care and diligence of council members); or
 - (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
 - (h) if the member contravenes section 37 (Disclosure of interests by council members); or
 - (i) if the member is absent from 3 consecutive meetings of the council, otherwise than on approved leave; or
 - (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (2) The Minister may also end the appointment of the member (the *member concerned*) if the council tells the Minister in writing that it has resolved, by a majority of at least $\frac{2}{3}$ of the members, to recommend to the Minister that the member's appointment be ended.
- (3) The council may pass a resolution mentioned in subsection (2) only if—
- (a) at least 3 weeks written notice of the intention to consider the proposed resolution has been given to the member concerned; and
 - (b) the member concerned has been given an opportunity to make submissions and present documents to a meeting of the council; and
 - (c) if the member concerned has used the opportunity mentioned in paragraph (b)—a summary of the member's submissions is recorded in the minutes of the council and a copy of any documents presented is included in the minutes.

[1.65] Section 33

omit

[1.66] Sections 34 and 35

substitute

34 Honesty, care and diligence of council members

In exercising the functions of a council member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

35 Conflict of interest

A council member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

36 Agenda to require disclosure of interest item

The agenda for each meeting of the council must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

37 Disclosure of interests by council members

- (1) If a council member has a material interest in an issue being considered, or about to be considered, by the council, the member must disclose the nature of the interest at a council meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member must not—
- (a) be present when the council considers the issue; or
 - (b) take part in a decision of the council on the issue.

Example

Derek, Ellen and Frank are members of the council. They have an interest in an issue being considered at a council meeting and they disclose the interest as soon as they become aware of it. Derek's and Ellen's interests are minor but Frank has a direct financial interest in the issue.

The council considers the disclosures and decides that because of the nature of the interests:

- Derek may be present when the council considers the issue but not take part in the decision
- Ellen may be present for the consideration and take part in the decision.

The council does not make a decision allowing Frank to be present or take part in the council's decision. Accordingly, since Frank has a material interest he cannot be present for the consideration of the issue or take part in the decision.

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).

- (3) Any other council member who also has a material interest in the issue must not be present when the council is considering its decision under subsection (2).
- (4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;

- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a council member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

38 Reporting of disclosed interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 43 (1), the chairperson of the council must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the council under section 43 (2).
- (2) The chairperson must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.

(4) In this section:

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

39 Protection of council members from liability

- (1) A council member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to a council member attaches instead to the institute.

40 Time and place of council meetings

- (1) Meetings of the council are to be held when and where it decides.
- (2) However, the council must meet—
 - (a) at least 6 times each year; and
 - (b) at least once every 3 months.
- (3) The chairperson—
 - (a) may at any time call a meeting of the council; and
 - (b) must call a meeting if asked by the Minister or at least 2 members.
- (4) The chairperson must give the other members reasonable notice of the time and place of a meeting called by the chairperson.

41 Presiding member at meetings

- (1) The chairperson presides at all meetings at which the chairperson is present.
- (2) If the chairperson is absent and the council has a deputy chairperson, the deputy chairperson presides.
- (3) If the chairperson and the deputy chairperson are absent or the chairperson is absent and there is no deputy chairperson, the member chosen by the members present presides.

42 Quorum at meetings

Business may be carried on at a meeting of the council only if at least $\frac{1}{2}$ the number of members appointed are present.

43 Voting at meetings

- (1) At a meeting of the council each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

44 Conduct of meetings etc

- (1) The council may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a council member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

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).

- (3) A council member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the council, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication.

Example of electronic communication

email

- (5) The council must keep minutes of its meetings.

[1.67] Part 7 heading

substitute

Part 7 Staff and consultants

[1.68] Section 49

substitute

49 Staff of institute

The institute staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

50 Consultants of institute

- (1) The institute may engage consultants.
- (2) Consultants are to be engaged on terms decided by the institute.
- (3) However, this section does not give the institute a power to enter into a contract of employment.

[1.69] Sections 55 and 56

omit

[1.70] Section 58 (1)

substitute

- (1) The institute must pay trust money into a banking account kept under the *Financial Management Act 1996*, section 57.

[1.71] Section 62

substitute

62 Delegation by director

The director may delegate the director's functions to someone else.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

[1.72] 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:

- calendar year
- corporation
- entity
- establish
- exercise.

director means the director of the institute.

Part 1.5 Canberra Institute of Technology Regulation 1994

[1.73] Regulation repealed

The *Canberra Institute of Technology Regulation 1994* SL1994-15 is repealed.

Part 1.6 Cemeteries and Crematoria Act 2003

[1.74] Part 3 heading

substitute

Part 3 The cemeteries authority

Note for pt 3

The governance of territory authorities, including the cemeteries authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.75] Division 3.1 heading

substitute

**Division 3.1 Establishment of cemeteries authority
and governing board**

[1.76] Sections 28 and 29

substitute

28 Establishment of cemeteries authority

The Australian Capital Territory Public Cemeteries Authority (the *cemeteries authority*) is established.

Note If a law changes a name of an entity (like the Australian Capital Territory Public Cemeteries Board), the entity continues in existence under the new name (the Australian Capital Territory Public Cemeteries Authority) and its identity is not affected by the change (see Legislation Act, s 183).

28A Functions of cemeteries authority

- (1) The functions of the cemeteries authority are to effectively and efficiently manage public cemeteries and crematoria for which the authority has been appointed in writing as the operator by the Minister.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) An appointment under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

29 Establishment of governing board

The cemeteries authority has a governing board.

29A Governing board members

- (1) The governing board has at least 4, and not more than 12, members.

Note 1 The chairperson and deputy chairperson of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

- (2) The governing board must include at least 4 members who, in the Minister's opinion, represent the general community and religious denominations.

[1.77] Section 30

omit

board

substitute

cemeteries authority

[1.78] Sections 31 and 32

omit

[1.79] Division 3.2

omit

[1.80] Division 3.3

omit

[1.81] Division 3.4 heading

substitute

Division 3.2 Staff of cemeteries authority

[1.82] Section 44 (1) and (2)

omit

board

substitute

cemeteries authority

[1.83] Section 44 (3)

omit

board's power

substitute

power of the cemeteries authority

[1.84] Dictionary, definition of *board*

omit

[1.85] Dictionary, new definition of *cemeteries authority*

insert

cemeteries authority means the Australian Capital Territory Public Cemeteries Authority.

[1.86] Dictionary, definition of *chairperson*

omit

[1.87] Dictionary, definition of *deputy chairperson*

omit

[1.88] Dictionary, new definition of *governing board*

insert

governing board means the governing board of the cemeteries authority.

[1.89] Dictionary, definition of *member*

omit

Part 1.7 Cultural Facilities Corporation Act 1997

[1.90] Section 3A

renumber as section 4

[1.91] Part 2 heading

substitute

Part 2 The corporation

Note for pt 2

The governance of territory authorities, including the corporation, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.92] Section 4

substitute

5 Establishment of corporation

The Cultural Facilities Corporation is established.

Note The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

[1.93] Section 5

renumber as section 6

[1.94] Section 6

omit

[1.95] Section 7, note

substitute

Note The corporation is also required to comply with applicable governmental policies (see *Financial Management Act 1996*, s 103).

[1.96] Section 9

omit

[1.97] Divisions 2.2 and 2.3

substitute

Division 2.2 Governing board of corporation

9 Establishment of governing board

The corporation has a governing board.

10 Governing board members

The governing board has 7 members.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

11 Chief executive officer of corporation

The chief executive officer of the corporation must be a public servant.

Note A chief executive officer must be appointed under the *Financial Management Act 1996*, s 80 (3).

[1.98] Part 3 heading

substitute

Part 3 Corporation staff and consultants

[1.99] Division 3.1

omit

[1.100] Division 3.2 heading

omit

[1.101] Sections 19 and 20

substitute

12 Staff

The corporation's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

13 Consultants

- (1) The corporation may engage consultants.
- (2) However, the corporation must not enter into a contract of employment under this section.

[1.102] Part 4

omit

[1.103] Part 5

renumber as part 4

[1.104] Section 27

omit

[1.105] Sections 28 to 31

renumber as sections 14 to 17

[1.106] Section 32

omit

[1.107] Schedule 2

omit

[1.108] Dictionary, definition of *designated location*

omit

3A

substitute

4

[1.109] Dictionary, new definition of *governing board*

insert

governing board means the governing board of the corporation.

[1.110] Dictionary, definition of *member*

omit

Part 1.8 Gambling and Racing Control Act 1999

[1.111] Section 1

substitute

1 Name of Act

This Act is the *Gambling and Racing Control Act 1999*.

[1.112] Section 3, definitions of *casino, commission* and *gaming officer*

omit

[1.113] Section 3, definitions (as amended)

relocate to dictionary

[1.114] Section 3, remainder

substitute

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.

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)).

3 Notes

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

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

[1.115] Part 2, new note

insert

Note for pt 2

The governance of territory authorities, including the commission, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.116] Division 2.1 heading

substitute

**Division 2.1 Establishment and functions of
commission**

[1.117] Section 5

substitute

5 Establishment of gambling and racing commission

The ACT Gambling and Racing Commission (the *commission*) is established.

[1.118] Section 6 (1) (c)

substitute

- (c) to exercise any other function given to the commission under this Act or any other territory law.

Note A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

[1.119] Section 9

omit

[1.120] Section 11

omit

[1.121] Division 2.2 heading

substitute

Division 2.2 Governing board

[1.122] Section 12

substitute

11 Establishment of governing board

The commission has a governing board.

12 Governing board members

- (1) The governing board has 5 members, of whom 1 must have knowledge, experience or qualifications related to providing counselling services to problem gamblers.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the authority is a member of the board (see *Financial Management Act 1996*, s 80 (4)).

- (2) A person is not eligible to be a member if—
- (a) the person or the person's domestic partner has an interest in a business subject to a gaming law; or
 - Note* For the meaning of **domestic partner**, see the Legislation Act, s 169.
 - (b) the person would be unlikely to be able to properly exercise the functions of a member because of the person's business association, financial association or close personal association with someone else; or
 - (c) the person has been convicted or found guilty of an offence against a gaming law or a corresponding law; or
 - (d) within 5 years before the proposed appointment, the person has been convicted, or found guilty, of an offence in Australia punishable by imprisonment for at least 1 year; or
 - (e) within 5 years before the proposed appointment, the person has been convicted, or found guilty, of an offence outside Australia that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year.
- (3) In this section:

corresponding law means a law of another jurisdiction, whether in or outside Australia, that regulates gaming or racing.

13 Chief executive officer of commission

The chief executive officer of the commission must be a public servant.

Note A chief executive officer must be appointed under the *Financial Management Act 1996*, s 80 (2) and (3).

[1.123] Section 13

omit

[1.124] Sections 14 and 15

substitute

14 Staff

The commission's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

15 Consultants and contractors

- (1) The commission may engage consultants and contractors.
- (2) However, the commission must not enter into a contract of employment under this section.

[1.125] Section 20

substitute

20 Authorised officers

- (1) The members of the governing board are authorised officers.
- (2) The chief executive officer may appoint a person to be an authorised officer.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (3) The chief executive may, in writing, recognise a person engaged in the administration or enforcement of a gaming law of a reciprocating jurisdiction as an authorised officer for this subsection.
- (4) If the chief executive recognises a person for subsection (3), the person is an authorised officer for the period and purpose stated in the recognition of the person.
- (5) A gaming officer to whom the chief executive officer delegates functions under division 4.2 is an authorised officer.

[1.126] Section 24 (1)

omit

chief executive

substitute

chief executive officer

[1.127] New section 53CA

insert

53CA Protection for authorised officers

- (1) This section applies to an authorised officer who is not a member of the governing board.

Note Members of governing boards are protected from liability under the *Financial Management Act 1996*, s 90.

- (2) The authorised officer is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) for the purpose of administering or enforcing a territory gaming law; or
 - (b) for the purpose of administering or enforcing a gaming law of a reciprocating jurisdiction under division 4.3; or

- (c) in the reasonable belief that the act or omission was for a purpose mentioned in paragraph (a) or (b).
- (3) Any liability that would, apart from this section, attach to the authorised officer attaches instead to the commission.

[1.128] Schedules 1 and 2

omit

[1.129] 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:

- ACT
- exercise
- function
- under.

authorised officer means a person who is an authorised officer under section 20.

casino means the casino under the *Casino Control Act 1988*.

chief executive officer means the chief executive officer of the commission.

commission means the Gambling and Racing Commission.

gaming officer means—

- (a) a member of the governing board; or
- (b) any other authorised officer; or

- (c) anyone else engaged (whether as an officer or employee or otherwise) in the administration or enforcement of a gaming law.

governing board means the governing board of the commission.

Part 1.9 Health Promotion Act 1995

[1.130] Title

substitute

An Act to establish an authority for the promotion of health, and for other purposes

[1.131] Section 3

substitute

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.

Note 2 A definition in the dictionary 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)).

3 Notes

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

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

[1.132] Part 2

substitute

Part 2 The health promotion authority

Note for pt 2

The governance of territory authorities, including the health promotion authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

Division 2.1 Establishment and functions of health promotion authority

4 Establishment of health promotion authority

The ACT Health Promotion Authority (the *health promotion authority*) is established.

Note If a law changes a name of an entity (like the ACT Health Promotion Board), the entity continues in existence under the new name (the ACT Health Promotion Authority) and its identity is not affected by the change (see Legislation Act, s 183).

5 Functions of health promotion authority

- (1) The health promotion authority has the following functions:
 - (a) funding activities related to the promotion of good health, safety and the prevention or early detection of disease;
 - (b) promoting good health in the community through the sponsorship of sports, recreation and arts activities, and cultural activities generally;

- (c) encouraging healthy lifestyles and supporting activities involving participation in healthy pursuits;
- (d) promoting, through self-supporting activities, the community's capacity to support its own good health;
- (e) promoting good health through collaboration between different sectors of the community;
- (f) exercising a function given to the authority under this Act or any other territory law;
- (g) funding research and development activities in support of the authority's functions under paragraphs (a) to (f).

Note A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

- (2) In exercising its functions, the health promotion authority may do any of the following:
 - (a) make grants;
 - (b) produce and market goods and services.
- (3) Subsection (2) does not limit the way in which the health promotion authority may exercise its functions.

6 Delegation by health promotion authority

The health promotion authority may delegate a function to a member of the governing board or a public servant.

Note 1 The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

7 Ministerial directions

- (1) The Minister may give the health promotion authority written directions in relation to the exercise of its functions.
- (2) Before giving a direction the Minister must—
 - (a) tell the governing board about the effect of the proposed direction; and
 - (b) give the board a reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comments made by the board.
- (3) The Minister must present a copy of a direction to the Legislative Assembly within 6 sitting days after the day the Minister makes it.
- (4) On receiving a direction under this section, the health promotion authority must comply with it.

Division 2.2 Governing board

8 Establishment of governing board

The health promotion authority has a governing board.

9 Governing board members

- (1) The governing board has 10 members.
- (2) The members must include the chief health officer and the following members:
 - (a) a member with expertise in business or accountancy;
 - (b) a member with expertise in media or communications;
 - (c) a member with expertise in employee relations or occupational health and safety;
 - (d) a member with expertise in community health;

- (e) a member with expertise in environmental health;
- (f) a member with expertise in sport or recreation;
- (g) a member with expertise in the arts or culture generally.

Note 1 A chair and deputy chair must be appointed to the governing board under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the health promotion authority is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

10 Exercise of functions of governing board

- (1) In exercising its functions, the governing board may do the following:
 - (a) appoint funding committees, chaired by members of the governing board, to give advice to the governing board about applications for funding;
 - (b) appoint other committees and working groups to assist the governing board.

Note The governing board also has functions under the *Financial Management Act 1996*.

- (2) Subsection (1) does not limit the way in which the governing board may exercise its functions.

Division 2.3 Staff, consultants and committees of health promotion authority

11 Staff

The health promotion authority staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the

appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

12 Consultants

- (1) The health promotion authority may engage consultants for this Act.
- (2) However, the health promotion authority must not enter into a contract of employment under this section.

13 Committees and working groups

A committee or working group may decide its own procedures, unless the governing board directs otherwise.

14 Application of governance provisions to committee members

- (1) The governance provisions apply to a committee member as if—
 - (a) a reference to a governing board member were a reference to a committee member; and
 - (b) a reference to the governing board were a reference to the committee; and
 - (c) a reference to a governing board meeting were a reference to a committee meeting; and
 - (d) any other necessary changes, and any changes prescribed by regulation, were made.
- (2) In this section:

committee means a committee or working group appointed by the governing board.

governance provisions means the following provisions of the *Financial Management Act 1996*:

- (a) section 85 (which is about honesty, care and diligence);
- (b) section 86 (which is about avoiding conflict of interest);
- (c) section 87 (which requires the agenda for a meeting to include an item about declaring a conflict of interest);
- (d) section 88 (which is about disclosure of interests).

15 Application of FMA protection provision to committee members etc

- (1) The *Financial Management Act 1996*, section 90 (Protection of governing board members from liability) applies to a relevant person as if—
- (a) a reference to a governing board member were a reference to a relevant person; and
 - (b) any other necessary changes were made.
- (2) In this section:

committee means a committee or working group appointed by the governing board.

relevant person means—

- (a) a member of a committee; or
- (b) a member of the staff of the health promotion authority; or
- (c) a consultant engaged by the health promotion authority.

[1.133] Sections 23 and 24

omit

board

substitute

health promotion authority

[1.134] Section 25

substitute

25 Expenditure

- (1) The income of the health promotion authority must be applied in the exercise of the authority's functions.
- (2) Without limiting subsection (1), the income of the health promotion authority must be applied towards payment of the following administrative costs:
 - (a) the remuneration and allowances of governing board members, together with any associated administrative costs;
 - (b) payments to the Territory of amounts equal to the salary and wages of the staff of the authority, together with any associated administrative costs;
 - (c) payments to consultants engaged by the authority;
 - (d) all other administrative overheads incurred in the exercise of the authority's functions.

[1.135] Sections 26 and 27

omit

[1.136] Sections 29 and 30

substitute

29 Authority's annual report

A report prepared by the health promotion authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include the following:

- (a) a copy of any direction given under section 7 (Ministerial directions) during the year;
- (b) a statement by the authority about action taken during the year to give effect to any direction given (whether before or during the year) under that section;
- (c) a copy of any determination made by the Minister under section 24 (Transfers to health promotion authority) during the year.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

[1.137] 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:

- ACT
- chief health officer
- entity
- exercise
- function

- under.

governing board means the governing board of the health promotion authority.

health promotion authority means the ACT Health Promotion Authority.

Part 1.10 Independent Competition and Regulatory Commission Act 1997

[1.138] Section 3 (1), definitions of *commission*, *commissioner*, *eligible person* and *function*

omit

[1.139] Section 3 (1), definitions (as amended)

relocate to dictionary

[1.140] Section 3, remainder

substitute

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 '***Gas Pipelines Access (A.C.T.) Law***—see the *Gas Pipelines Access Act 1998*, dictionary.' means that the term '***Gas Pipelines Access (A.C.T.) Law***' is defined in that dictionary and the definition applies to this Act.

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)).

2A Notes

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

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

2B Joint ownership, control or operation

A reference in this Act to a person who owns, controls or operates infrastructure facilities includes a reference to each of 2 or more people who jointly own, control or operate infrastructure facilities.

3 Joint provision of services

A reference in this Act to a person who provides services includes a reference to each of 2 or more people who jointly provide services.

[1.141] Section 6 (1)

omit

commissioners

substitute

commissioners

[1.142] New sections 10A and 10B

insert

10A Chief executive officer

- (1) The chief executive must appoint a public servant as the Chief Executive Officer of the commission.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) However, the chief executive must not appoint the chief executive officer unless the chief executive has consulted the commission about the proposed appointment.

10B Chief executive officer's functions

- (1) The chief executive officer has the following functions:
- (a) ensuring, as far as practicable, that the commission's statement of intent is implemented effectively and efficiently;
 - (b) managing the day-to-day operations of the commission secretariat in accordance with—
 - (i) applicable governmental policies (if any) for the commission; and
 - (ii) the policies set by the commission (if any); and
 - (iii) each legal requirement that applies to the commission;
 - (c) regularly advising the commission about the commission's operation and financial performance.

Example for par (b) (iii)

a direction given to the commission under the *Utilities Act 2000*, section 19

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) In this section:

applicable governmental policies—see the *Financial Management Act 1996*, section 103.

statement of intent—see the *Financial Management Act 1996*, section 61 (1).

[1.143] 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:

- Act
- function
- subordinate law (see s 8).

assistant commissioner means a commissioner nominated as an assistant commissioner under schedule 1, section 1.1.

associate commissioner means a commissioner appointed under schedule 1, section 1.1A.

chief executive officer means the Chief Executive Officer of the commission.

commission means the Independent Competition and Regulatory Commission for the Australian Capital Territory.

commissioner means a commissioner constituting the commission under section 6 (1).

commission secretariat means—

- (a) the chief executive officer; and
- (b) the other staff of the commission.

eligible person, for part 4C (Review of price directions)—see section 24J.

senior commissioner means the commissioner nominated as senior commissioner under schedule 1, section 1.1.

standing commissioner means the senior commissioner or an assistant commissioner.

Part 1.11 Insurance Authority Act 2005

[1.144] Part 2 heading

substitute

Part 2 The insurance authority

Note for pt 2

The governance of territory authorities, including the health promotion authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.145] Section 7 (1)

substitute

- (1) The Australian Capital Territory Insurance Authority is established.

Note 1 The authority is a corporation (see *Financial Management Act 1996*, s 54 (1), s 72, def *relevant territory authority*, and s 73).

Note 2 The Legislation Act, dict, pt 1, defines *establish* as including continue in existence.

[1.146] Section 7 (2) and (3)

omit

[1.147] Section 7 (4)

renumber as section 7 (2)

[1.148] Section 9

omit

Part 1.12 Legal Aid Act 1977

[1.149] New section 94A

insert

94A Application of Financial Management Act to commission

- (1) The *Financial Management Act 1996*, section 55 (2) (Responsibilities of chief executive officers of territory authorities) applies to the commission subject to this Act.
- (2) The *Financial Management Act 1996*, part 9 (Governance of territory authorities) does not apply to the commission.

Part 1.13 Long Service Leave (Building and Construction Industry) Act 1981

[1.150] Section 1

substitute

1 Name of Act

This Act is the *Long Service Leave (Building and Construction Industry) Act 1981*.

[1.151] Section 3 (1), definitions of *board, chairperson, deputy registrar, member and registrar*

omit

[1.152] Section 3 (1), definitions (as amended)

relocate to dictionary

[1.153] Section 3, remainder

substitute

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.

Note 2 A definition in the dictionary 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)).

3 Notes

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

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

4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 19 (Identity cards)
- s 24 (Contravention of requirement by inspector)
- s 25 (Duty to give information or documents).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Work taken to be performed in building and construction industry

For this Act, work consisting of any of the following is taken to be work performed in the building and construction industry:

- (a) planning, sewing and laying floor coverings;
- (b) landscaping.

6 Certain work outside ACT taken to be building and construction work

For this Act, work performed by an employee or registered contractor (the *worker*) outside the ACT is taken to be building and construction work if—

- (a) the work would, if it were performed in the ACT, be building and construction work; and
- (b) the employer of the worker pays the board the prescribed amount under section 37 or section 38 in relation to the ordinary remuneration paid or payable to the worker in relation to the performance by the worker of the work.

7 Person not taken not to be employee only because of commission

For this Act, a person is not taken not to be an employee only because the person is remunerated, completely or partly, by commission.

[1.154] Part 2

substitute

Part 2 Administration

Division 2.1 The authority, governing board and staff

Note for div 2.1

The governance of territory authorities, including the Construction Industry Long Service Leave Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

8 Establishment of authority

The Construction Industry Long Service Leave Authority (the *authority*) is established.

Note If a law changes a name of an entity (like the Construction Industry Long Service Leave Board), the entity continues in existence under the new name (the Construction Industry Long Service Leave Authority) and its identity is not affected by the change (see Legislation Act, s 183).

9 Authority not territory instrumentality etc

The authority is not a territory instrumentality and does not represent the Territory.

10 Functions of authority

- (1) The authority has the following functions:
- (a) administering the scheme of long service benefits established under this Act;
 - (b) making payments under this Act;
 - (c) keeping the employers register and the employees and contractors register in accordance with this Act;
 - (d) exercising any other function given to the authority under this Act or any other territory law.

Note A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

- (2) In exercising its functions, the authority may do any of the following:
- (a) take any necessary action to recover amounts payable to the authority and debts incurred against the authority;
 - (b) enter into agreements to borrow amounts in accordance with this Act;
 - (c) incur legal and other costs in proceedings by or against the authority;
 - (d) refund any amounts refundable under this Act;
 - (e) give effect to a reciprocal agreement or reciprocal arrangement.
- (3) Subsection (2) does not limit how the authority may exercise its functions.

11 Delegation by authority

The authority may delegate the authority's functions to the registrar or any other public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

12 Establishment of governing board

The authority has a governing board.

13 Governing board members

- (1) The governing board has 4 members.

Note 1 The chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The registrar is a member of the governing board (see dict, def *registrar* and *Financial Management Act 1996*, s 80 (4)).

- (2) One member of the governing board must be appointed to represent employer organisations.
- (3) One member of the governing board must be appointed to represent employee organisations.
- (4) The chair of the governing board must not be the member mentioned in subsection (2) or (3).
- (5) A member of the governing board must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (6) The Minister may, under the Legislation Act, section 209, appoint a person to act as a member.

- (7) The registrar is a non-voting member of the governing board.

Note The *Financial Management Act 1996*, s 95 (2) and s 96 (1) deal with non-voting members of governing boards.

14 No deputy chair

The Minister must not appoint a deputy chair for the governing board.

Note 1 This section ensures that a deputy chair cannot be appointed for the governing board under the *Financial Management Act 1996*, s 79 (1).

Note 2 The Minister may appoint an acting chair (see Legislation Act, s 209).

15 Deputy registrar

- (1) The chief executive must appoint a public servant to be deputy registrar for the authority.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) If the registrar is absent or cannot for any reason exercise the functions of the registrar, the deputy registrar must act as registrar.

Note The Legislation Act, div 19.3.2A deals with standing acting arrangements.

16 Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister about any change that the board considers should be made to the rate of payments made by employers and registered contractors under this Act;

- (b) making recommendations to the Minister about the laws of a State that the board considers suitable to be declared corresponding laws under section 62;
- (c) exercising any other function given to the board under this Act or any other territory law.

Note The governing board also has functions under the *Financial Management Act 1996*.

17 Arrangements for staff

- (1) The authority may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the authority of public servants who are the subject of an arrangement under subsection (1).

Division 2.2 Inspectors and their powers

18 Inspectors

The registrar may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Words in the singular in a provision include words in the plural (see Legislation Act, s 145).

19 Identity cards

- (1) The registrar must give an inspector an identity card stating the person's name and that the person is an inspector.

- (2) The identity card must show—
- (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
- (a) the person stops being an inspector; and
 - (b) the person does not return the person's identity card to the registrar as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the registrar after the commencement of this section.
- (6) Subsection (5) is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day this section commences.

20 Powers in relation to premises

- (1) This section applies if an inspector believes, on reasonable grounds, that premises are the premises of an employer.
- (2) The inspector may—
- (a) at any reasonable time, enter the premises; or
 - (b) at any time, enter the premises with the occupier's consent.
- (3) However, subsection (2) (a) does not authorise entry into a part of premises that is being used only for residential purposes.

- (4) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (5) To remove any doubt, an inspector may enter premises under subsection (2) without payment of an entry fee or other charge.
- (6) In this section:

at any reasonable time means at any time during normal business hours or any other time when the premises are being used as a workplace.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

21 Production of identity card by inspectors

An inspector must not remain at premises entered under this division if the inspector does not produce his or her identity card for inspection when asked by the occupier.

22 Consent to entry by inspectors

- (1) When seeking the consent of an occupier to enter premises under section 20 (2) (b) (Powers in relation to premises), an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found because of the entry may be used in evidence in court; and
 - (iii) that consent may be refused.

-
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
- (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found because of the entry may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this division if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

23 General powers of inspectors for premises

An inspector who enters premises under this division may, for this Act, do 1 or more of the following in relation to the premises:

- (a) examine any records required to be kept by an employer under this Act;
- (b) require the occupier, or anyone at the premises, to give the inspector information relating to the rights and duties under this Act of an employer or someone employed by the employer;

- (c) require the occupier, or anyone at the premises, to give the inspector records, or copies of records that the person has or has access to that are required to be kept by an employer under this Act.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

24 Contravention of requirement by inspector

A person must take all reasonable steps to comply with a requirement made of the person under section 23 (b) or (c).

Maximum penalty: 50 penalty units.

25 Duty to give information or documents

- (1) An inspector may, by written notice given to a person, require the person to give to the inspector the stated information or document that the inspector reasonably needs for this Act.
- (2) The information or document must be given to the inspector within the period stated in the notice or, if an inspector allows a longer period, the longer period.
- (3) The period stated in the notice must be not less than 14 days after the day the notice is given to the person.
- (4) A person commits an offence if—
 - (a) the person is required to give information or a document to an inspector under subsection (1); and

- (b) the person does not take all reasonable steps to comply with the requirement within the period applying under subsection (2).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Division 2.3 Finances

25A Money of authority

The money of the authority consists of—

- (a) amounts received by the authority under section 37 and section 38; and
- (b) income derived from the investment of money of the authority; and
- (c) amounts borrowed by the authority; and
- (d) amounts paid to the authority under a reciprocal agreement or reciprocal arrangement; and
- (e) any other amount paid to the authority under this Act.

25B Application of authority money

The money of the authority must be applied only—

- (a) in payment or discharge of the costs, expenses or other obligations of the authority under this Act; and
- (b) in payment of remuneration and allowances payable to anyone appointed or employed under this Act.

25C Three-yearly investigation by actuary

- (1) The Treasurer must appoint an actuary for this Act.
Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.
Note 2 For example, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).
Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).
- (2) The actuary must conduct an investigation of the state and adequacy of the money of the authority—
 - (a) when asked by the governing board; and
 - (b) in any event, at least once every 3 years.
- (3) The actuary must report the results of the investigation to the governing board and state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of periodic payments payable to the authority by employers and registered contractors under this Act.
- (4) The actuary must give the Minister a copy of each report made under this section.

[1.155] Section 40

omit

The board shall cause to be entered and maintained

substitute

The registrar must enter

[1.156] Section 45 (1)

omit

board shall

substitute

registrar must

[1.157] Section 45 (3)

omit everything before paragraph (a), substitute

- (3) The registrar must not remove the name of a registered employee or registered contractor from the employees and contractors register if the employee or contractor stops performing building and construction work and has told the authority that he or she is otherwise employed or engaged in work in the building and construction industry, until—

[1.158] Section 45 (6)

omit

board shall

substitute

registrar must

[1.159] Section 55 (3)

substitute

- (3) On application under subsection (1), the authority must pay to the applicant an amount worked out under section 57 if the governing board is satisfied that the applicant is entitled to long service leave under this Act.

[1.160] Section 56 (6)

substitute

- (6) On application under subsection (1), the authority must pay to the applicant an amount worked out under section 57 if the governing board is satisfied that the applicant is entitled to payment instead of long service leave under this Act.

[1.161] Section 56A (3)

substitute

- (3) If the authority receives an application in relation to a period of service in a reciprocating State or Territory, the authority must—
- (a) send particulars of the application, including details of the period of service credited to the applicant in the employees and contractors register, to the reciprocal authority of the State or Territory; and
 - (b) send the reciprocal authority any other relevant information, and copies of any relevant documents, in the authority's possession, including, for an applicant who has ceased to work in the building and construction industry because of total incapacity—
 - (i) the copy of the doctor's certificate mentioned in subsection (2) (c); and
 - (ii) if the applicant submitted to a medical examination required by the governing board under section 56 (3)—a copy of the examiner's report; and
 - (iii) if the applicant was required to submit to a medical examination under section 56 (3) but refused to submit to the examination—advice of that refusal; and

- (iv) advice about whether or not the governing board is satisfied that the applicant is entitled to payment under this Act in relation to the period of service credited to the applicant in the employees and contractors register.

[1.162] Section 56B heading

substitute

56B Payments by reciprocal authority on authority's behalf

[1.163] Section 56B (1)

substitute

- (1) This section applies if the authority receives from a reciprocal authority particulars of an application made to the reciprocal authority by a registered employee or registered contractor for payment in relation to long service leave, or payment instead of long service leave, in relation to a period of service credited to the applicant in the employees and contractors register.
- (2) The authority may authorise the reciprocal authority to pay the applicant, on behalf of the authority, the amount worked out by the authority under section 57 as the amount to which the applicant is entitled if the governing board is satisfied that the applicant is entitled to the payment.

[1.164] Section 56B (3)

omit

- (2) (b) (ii)

substitute

- (3) (b) (ii)

[1.165] Section 56B (4)

omit

(2) (b) (i) or (ii)

substitute

(3) (b) (i) or (ii)

[1.166] Section 56B (2) to (5) (as amended)

renumber as section 56B (3) to (6)

[1.167] Section 57A (b)

omit

56B (5)

substitute

56B (6)

[1.168] Section 59 (1) (a) and (d)

omit

[1.169] Section 59 (1) (g)

substitute

(g) that it is not satisfied under section 45 (6) (b) that an employee or contractor has been credited with a period of service under a corresponding law; or

[1.170] Section 59 (1) (k)

substitute

(k) that it is not satisfied under section 55 (3) that an applicant is entitled to long service leave under this Act; or

- (ka) that it is not satisfied under section 56 (6) that a registered employee or registered contractor is entitled to payment instead of long service leave under this Act; or

[1.171] Section 59 (1) (m) and (n)

substitute

- (m) that it is not satisfied under section 56B (2) that an applicant is entitled to a payment; or
- (n) that it is not satisfied under section 63 (5) that an amount paid by an employer was properly paid.

[1.172] Section 59 (1) (b) and (c)

renumber as section 59 (1) (a) and (b)

[1.173] Section 59 (1) (ka) to (n) (as amended)

renumber as section 59 (1) (l) to (o)

[1.174] Section 59 (2)

substitute

- (2) Application may be made to the administrative appeals tribunal for review of a decision by the registrar—
- (a) refusing to register an employer under section 28 (1); or
- (b) allowing, or refusing to allow, a further period as mentioned in section 37 (1); or
- (c) refusing to remit, under section 37 (7), part or all of an amount payable by an employer under section 37 (6); or
- (d) refusing to allow a further period under section 37 (6) (b); or
- (e) allowing, or refusing to allow, a further period as mentioned in section 38 (1); or

- (f) refusing to credit an employee with a period of service under section 42 (8).

[1.175] Section 59A

substitute

59A Notification of decisions

- (1) If the governing board or registrar makes a decision mentioned in section 59, the registrar must give written notice of the decision to the person whose interests are affected by the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

[1.176] New section 67

insert

67 Transitional—def *building and construction*

- (1) The Building Industry Labourers (On-Site) A.C.T. Award 1986 is taken to have been a prescribed award for the period starting on 14 April 1986 and ending immediately before the commencement of the *Long Service Leave (Building and Construction Industry) (Amendment) Act (No 3) 1988*.
- (2) This section ends 1 month after the day it commences.

Note Repeal does not end the effect of transitional laws (see Legislation Act, s 88).

[1.177] 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:

- ACT
- chief executive (see s 163)
- exercise
- function
- public servant
- under.

authority means the Construction Industry Long Service Leave Authority.

governing board means the governing board of the authority.

registrar means the chief executive officer of the authority.

[1.178] Further amendments, mentions of board

omit

board

substitute

authority

in

- section 26
- section 31
- section 37 (1) (a), (2), (6) and (8)
- section 37A (2) (b)

Schedule 1
Part 1.13

Amendments of other legislation
Long Service Leave (Building and Construction Industry) Act 1981

Amendment [1.178]

- section 38 (1) and (2)
- section 41 (1) (1st mention)
- section 41 (5) (2nd and 3rd mentions)
- section 41 (6) (2nd and 3rd mentions)
- section 42 (6) (c)
- section 42 (7) and (8) (b)
- section 45 (3) (a) and (b)
- section 45 (8)
- section 46 (1) (c)
- section 47 (d)
- section 48 (1)
- section 48 (2) (1st mention)
- section 53 (1) (c)
- section 55 (1) and (2) (b)
- section 55 (4)
- section 56 (1) and (2) (b)
- section 56 (4)
- section 56A (1)
- section 56A (4)
- section 56A (5)
- section 56B (2) (a)
- section 56B (2) (b) (i)
- section 56B (3)
- section 56B (5)
- section 57 (1)
- section 57 (3)
- section 57 (5), definition of *assessment date*
- section 57 (5), definition of *determined rate* (mentions other than 1st mention)
- section 57 (5), definition of *total equity*
- section 57A

- section 63 (2) to (4)
- section 63 (5) (mentions other than 2nd mention)
- section 63 (6)
- section 64 (b)

[1.179] Further amendments, mentions of *board*

before

board

insert

governing

in

- section 28 (2) (c)
- section 36 (2) (e)
- section 36 (4) (1st mention)
- section 36 (5) (1st mention)
- section 36 (7)
- section 37 (4) and (5)
- section 37 (10)
- section 37A (1)
- section 38 (4)
- section 40 (g)
- section 41 heading
- section 41 (1) (2nd mention)
- section 41 (2) (1st mention)
- section 41 (3) (1st mention)
- section 41 (5) (1st mention)
- section 41 (6) (1st mention)
- section 45 (6) (b)
- section 48 (2) (2nd mention)
- section 52 (1) (a)

- section 53 (2)
- section 56 (3) (1st mention)
- section 56 (5) (1st mention)
- section 56B (2) (1st mention)
- section 56B (4)
- section 57 (4)
- section 57 (5), definition of *determined rate* (1st mention)
- section 59 (1)
- section 62 (1)
- section 63 (5) (2nd mention)

Part 1.14 Long Service Leave (Contract Cleaning Industry) Act 1999

[1.180] Part 2

substitute

Part 2 Administration

Division 2.1 The authority, governing board and staff

Note for div 2.1

The governance of territory authorities, including the Cleaning Industry Long Service Leave Authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

5 Establishment of authority

The Cleaning Industry Long Service Leave Authority (the *authority*) is established.

Note If a law changes a name of an entity (like the Cleaning Industry Long Service Leave Board), the entity continues in existence under the new name (the Cleaning Industry Long Service Leave Authority) and its identity is not affected by the change (see Legislation Act, s 183).

6 Authority not territory instrumentality etc

The authority is not a territory instrumentality and does not represent the Territory.

7 Functions of authority

The authority has the following functions:

- (a) administering the scheme of long service leave benefits established under this Act;
- (b) making payments under this Act;
- (c) keeping the section 29 register and section 36 register;
- (d) exercising any other function given to the authority under this Act or any other territory law.

8 Delegation by authority

The authority may delegate its functions to the registrar or a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

9 Establishment of governing board

The authority has a governing board.

10 Governing board members

- (1) The governing board has 4 members.

Note 1 The chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The registrar is a member of the governing board (see dict, def **registrar** and *Financial Management Act 1996*, s 80 (4)).

- (2) One member of the governing board must be appointed to represent employer organisations.
- (3) One member of the governing board must be appointed to represent employee organisations.
- (4) The chair of the governing board must not be the member mentioned in subsection (2) or (3).
- (5) A member of the governing board must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def **appoint**).

- (6) The Minister may, under the Legislation Act, section 209, appoint a person to act as a member.
- (7) The registrar is a non-voting member of the governing board.

Note The *Financial Management Act 1996*, s 95 (2) and s 96 (1) deal with non-voting members of governing boards.

11 No deputy chair

The Minister must not appoint a deputy chair for the governing board.

Note 1 This section ensures that a deputy chair cannot be appointed for the governing board under the *Financial Management Act 1996*, s 79 (1).

Note 2 The Minister may appoint an acting chair (see Legislation Act, s 209).

12 Deputy registrar

- (1) The chief executive must appoint a public servant to be deputy registrar for the authority.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) If the registrar is absent or cannot for any reason exercise the functions of the registrar, the deputy registrar must act as registrar.

Note The Legislation Act, div 19.3.2A deals with standing acting arrangements.

13 Functions of governing board

The governing board has the following functions:

- (a) making recommendations to the Minister under section 39B (1) (Determination of levy);
- (b) exercising any other function given to the board under this Act or any other territory law.

Note The governing board also has functions under the *Financial Management Act 1996*.

14 Arrangements for staff

- (1) The authority may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the authority of public servants who are the subject of an arrangement under subsection (1).

Division 2.2 Inspectors and their powers

15 Inspectors

The registrar may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Words in the singular in a provision include words in the plural (see Legislation Act, s 145).

16 Identity cards

- (1) The registrar must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an inspector; and
 - (b) the person does not return the person's identity card to the registrar as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the registrar after the commencement of this section.

- (6) Subsection (5) is declared to be a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day this section commences.

17 Powers in relation to premises

- (1) This section applies if an inspector believes, on reasonable grounds, that premises are the premises of an employer.
- (2) The inspector may—
 - (a) at any reasonable time, enter the premises; or
 - (b) at any time, enter the premises with the occupier's consent.
- (3) However, subsection (2) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (4) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (5) To remove any doubt, an inspector may enter premises under subsection (2) without payment of an entry fee or other charge.
- (6) In this section:

at any reasonable time means at any time during normal business hours or any other time when the premises are being used as a workplace.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

18 Production of identity card by inspectors

An inspector must not remain at premises entered under this division if the inspector does not produce his or her identity card for inspection when asked by the occupier.

19 Consent to entry by inspectors

- (1) When seeking the consent of an occupier to enter premises under section 17 (2) (b) (Powers in relation to premises), an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found because of the entry may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found because of the entry may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this division if—
- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

20 General powers of inspectors for premises

An inspector who enters premises under this division may, for this Act, do 1 or more of the following in relation to the premises:

- (a) examine any records of the employer to check the accuracy of information given to, or held by, the authority;
- (b) require the occupier, or anyone at the premises, to give the inspector information relating to the rights and duties under this Act of an employer or someone employed by the employer;
- (c) require the occupier, or anyone at the premises, to give the inspector records, or copies of records that the person has or has access to that are reasonably required by the inspector to check the accuracy of information given to, or held by, the authority.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

21 Contravention of requirement by inspector

A person must take all reasonable steps to comply with a requirement made of the person under section 20 (b) or (c).

Maximum penalty: 50 penalty units.

22 Duty to give information or documents

- (1) An inspector may, by written notice given to a person, require the person to give to the inspector the stated information or document that the inspector reasonably needs for this Act.
- (2) The information or document must be given to the inspector within the period stated in the notice or, if an inspector allows a longer period, the longer period.
- (3) The period stated in the notice must be not less than 14 days after the day the notice is given to the person.
- (4) A person commits an offence if—
 - (a) the person is required to give information or a document to an inspector under subsection (1); and
 - (b) the person does not take all reasonable steps to comply with the requirement within the period applying under subsection (2).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Division 2.3 Finances

23 Money of authority

The money of the authority consists of—

- (a) amounts received by the authority under section 39A (Levy payments); and

- (b) income derived from the investment of money of the authority;
and
- (c) amounts borrowed by the authority; and
- (d) any other amounts paid to the authority under this Act.

24 Application of authority money

The money of the authority must be applied only—

- (a) in payment or discharge of the costs, expenses or other obligations of the authority under this Act; and
- (b) in payment of remuneration and allowances payable to anyone appointed or employed under this Act.

25 Three-yearly investigation by actuary

- (1) The Treasurer must, in writing, appoint an actuary for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 For example, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The actuary must conduct an investigation of the state and adequacy of the money of the authority—
- (a) when asked by the governing board; and
 - (b) in any event, at least once every 3 years.
- (3) The actuary must report the results of the investigation to the governing board and state whether, in the actuary's opinion, any reduction or increase is necessary in the rates of periodic payments payable to the authority by employers under this Act.

- (4) The actuary must give the Minister a copy of each report made under this section.

[1.181] Section 44 heading

substitute

44 Decisions about ordinary wages by governing board

[1.182] Section 60 (1) (i)

substitute

- (i) that it is not satisfied under section 55 (3) that an applicant is entitled to long service leave; or
- (j) that it is not satisfied under section 56 (6) that an applicant is entitled to payment instead of leave under this Act; or
- (k) that it is not satisfied under section 64 (5) that an amount paid by an employer was properly paid.

[1.183] Section 61

substitute

61 Notification of decisions

- (1) If the governing board or registrar makes a decision mentioned in section 60, the registrar must give written notice of the decision to the person whose interests are affected by the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

[1.184] Dictionary, new notes

insert

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:

- ACT
- chief executive (see s 163)
- exercise
- function
- public servant
- under.

[1.185] Dictionary, new definition of *authority*

insert

authority means the Cleaning Industry Long Service Leave Authority.

[1.186] Dictionary, definitions of *board* and *chairperson*

substitute

chair means the chair of the governing board.

Note The chair must be appointed under the *Financial Management Act 1996*, s 79.

[1.187] Dictionary, definition of *deputy registrar*

omit

[1.188] Dictionary, definition of *governing board*

insert

governing board means the governing board of the authority.

[1.189] Dictionary, definitions of *member* and *quarter*

omit

[1.190] Dictionary, definition of *registrar*

substitute

registrar means the chief executive officer of the authority.

[1.191] Further amendments, mentions of *board*

omit

board

substitute

authority

in

- section 3D (3)
- section 4 (b)
- section 29
- section 31 (1) (b)
- section 33 (3) (b)
- section 36
- section 39 (1)
- section 39A (1)
- section 40 (1)
- section 40 (2)
- section 40 (4) and (5)
- section 41 (1) and (2) (b)
- section 44 (1) (2nd mention)
- section 44 (7) (1st mention)
- section 44 (8) (1st mention)
- section 46 (1)
- section 55 (1) and (2) (b)
- section 55 (3) (2nd and 3rd mentions)
- section 55 (4)

- section 56 (1) and (2) (b)
- section 56 (4)
- section 56 (6) (2nd and 3rd mentions)
- section 57 (1)
- section 57 (4), definition of *actual pay* and *relevant annual award pay*
- section 58
- section 60 (2) (b)
- section 62 (1) (a) to (d)
- section 62 (2) (b) and (c)
- section 64 (2), (3) and (4)
- section 64 (5) (other than 2nd mention)

[1.192] Further amendments, mentions of *board*

before

board

insert

governing

in

- section 33 (2)
- section 33 (3) (1st mention)
- section 33 (4)
- section 34 (1) (e)
- section 37A (4)
- section 37A (5) (1st mention)
- section 38 (1) (e)
- section 38A (2), (3) and (4)
- section 39B (1)
- section 43 (f)
- section 44 (1) (1st mention)

- section 44 (2)
- section 44 (3) (a) (1st mention)
- section 44 (4)
- section 44 (5) and (6)
- section 44 (7) (2nd mention)
- section 44 (8) (2nd mention)
- section 49 (1) and (2)
- section 53 (1) (a)
- section 54 (2) (a) (i)
- section 54 (4) (d) (ii)
- section 55 (3) (1st mention)
- section 56 (3) (1st mention)
- section 56 (5) (1st mention)
- section 56 (6) (1st mention)
- section 60 heading
- section 60 (1)
- section 64 (5) (2nd mention)

Part 1.15 **National Exhibition Centre Trust Act 1976**

[1.193] Title

substitute

An Act to establish an Exhibition Park Corporation

[1.194] Section 1

substitute

1 Name of Act

This Act is the *Exhibition Park Corporation Act 1976*.

[1.195] Section 2

substitute

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.

Note 2 A definition in the dictionary 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)).

3 Notes

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

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

[1.196] Part 2

substitute

Part 2 Establishment and functions of corporation

Note for pt 2

The governance of territory authorities, including the corporation, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

Division 2.1 Establishment and functions of corporation

4 Establishment of corporation

The Exhibition Park Corporation (the *corporation*) is established.

5 Functions of corporation

The corporation has the following functions:

- (a) managing the national exhibition centre;
- (b) conducting, at the national exhibition centre, exhibitions, conventions and shows and sporting, recreational and cultural activities;
- (c) conducting, at the national exhibition centre, other activities that the Minister approves;
- (d) providing, at the national exhibition centre, buildings, structures, arenas and facilities, whether permanent or temporary, necessary for, or incidental to, the conduct of the exhibitions, shows and activities mentioned in paragraph (b) or (c);
- (e) conducting, on land held by the corporation under lease, the activities or undertakings authorised by the lease that the corporation considers appropriate;
- (f) exercising any other function given to the corporation under this Act or any other territory law.

Examples of activities that may be conducted under par (e)

- 1 hosting sales (whether retail or wholesale) and markets
- 2 providing catering for functions, exhibitions, shows and other events

Note 1 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).

Note 2 A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

6 Exercise of corporation's functions

(1) In this section:

corporation land means the national exhibition centre or land held by the corporation under lease.

(2) In exercising its functions, the corporation may do any of the following:

- (a) hold land under lease;
- (b) assign and surrender leases;
- (c) grant subleases;
- (d) acquire, hold and dispose of personal property;
- (e) enter into contracts, other than contracts of employment;
- (f) grant licences to people to use corporation land for purposes for which the corporation is authorised to use the land;
- (g) charge for admission to corporation land;
- (h) grant, subject to any charges and other terms and conditions the corporation considers appropriate, rights to televise, broadcast, film or record activities conducted on or in relation to corporation land;
- (i) charge for the use of facilities and services provided by the corporation on or in relation to corporation land;
- (j) advertise and promote activities conducted on or in relation to corporation land;
- (k) give prizes and awards to people in relation to activities conducted on or in relation to corporation land.

- (3) Subsection (2) does not limit how the corporation may exercise its functions.
- (4) However, the corporation must not do any of the following without the Minister's written approval:
 - (a) hold land under a lease other than a lease granted by the Commonwealth;
 - (b) erect buildings (other than temporary buildings) on corporation land;
 - (c) enter into a contract involving the payment or receipt of a total amount larger than \$100 000;
 - (d) carry out, or join in carrying out, works on land other than corporation land;
 - (e) assign or mortgage a lease;
 - (f) grant a sublease for a term of longer than 1 year.

7 Sufficient revenue policy

The corporation must follow a financial policy directed towards securing revenue sufficient to meet all its expenditure properly chargeable against revenue, unless the Minister otherwise directs in writing.

[1.197] Part 3

substitute

Division 2.2 Governing board

8 Establishment of governing board

The corporation has a governing board.

9 Governing board members

The governing board has at least 7, but not more than 9, members.

Note 1 A chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the corporation is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

[1.198] Part 4

renumber as part 3

[1.199] Section 18

omit

trust

substitute

corporation

[1.200] Section 18 (as amended)

renumber as section 10

[1.201] Part 5

renumber as part 4

[1.202] Section 22

substitute

11 Application of corporation money

The money of the corporation must be applied only—

- (a) in payment of the costs, expenses or other obligations of the corporation under this Act; or
- (b) in payment of remuneration and allowances payable to anyone appointed under this Act.

[1.203] Section 26

omit

trust

substitute

corporation

[1.204] Section 26 (as amended)

renumber as section 12

[1.205] Part 6

renumber as part 5

[1.206] Section 28 (1)

omit

trust may, under its common seal and

substitute

corporation may,

[1.207] Section 28 (as amended)

renumber as section 13

[1.208] Part 7

renumber as part 6

[1.209] Section 29

omit

[1.210] Section 29A

substitute

14 Corporation's annual reports

A report prepared by the corporation under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include details of—

- (a) any approvals given by the Minister under the following provisions of the Act during the year:
- section 5 (c) (Functions of corporation)
 - section 6 (4) (Exercise of corporation's functions)
 - section 13 (1) (Power to make by-laws); and
- (b) any direction given by the Minister to the corporation under section 7 (Sufficient revenue policy) during the year.

[1.211] Section 30

substitute

15 Racing Act 1999 etc not affected

This Act does not affect the operation of the *Racing Act 1999* or the *Gaming and Betting Act 1906*.

[1.212] Section 31

renumber as section 16

[1.213] Schedule 1, reference

substitute

(see dict, def *national exhibition centre*)

[1.214] 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:

- ACT
- exercise
- function
- under.

corporation means the Exhibition Park Corporation.

governing board means the governing board of the corporation.

national exhibition centre means the land described in schedule 1.

Part 1.16 Planning and Land Act 2002

[1.215] Section 9 (3), note

substitute

Note For the meaning of *sustainable development*, see s 53. The statement of planning intent is dealt with in s 14.

[1.216] Part 4.1 heading, new note

insert

Note for pt 4.1

The governance of territory authorities, including the land agency, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

[1.217] Section 38

substitute

38 Establishment of land agency

The Land Development Agency (the *land agency*) is established.

[1.218] Section 39 (4) and notes

substitute

- (4) The land agency must exercise its functions—
- (a) in accordance with the objectives of the territory plan; and
 - (b) in accordance with the latest statement of intent for the land agency.

Note 1 The land agency is required to prepare a statement of intent under the *Financial Management Act 1996*.

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

[1.219] Section 40, note

substitute

Note The land agency may be given a direction under s 44.

[1.220] Sections 41 to 43

omit

[1.221] Part 4.2 heading

substitute

Part 4.2 Financial and general land agency provisions

Note for pt 4.2

The land agency must not give a guarantee without the Treasurer's approval (see *Financial Management Act 1996*, s 60).

[1.222] Division 4.2.1

omit

[1.223] Division 4.2.2

omit

[1.224] Division 4.2.3 heading

omit

[1.225] Sections 47 to 49

renumber as sections 41 to 43

[1.226] Section 50

omit

[1.227] Division 4.2.4 heading

omit

[1.228] Section 51

omit

[1.229] Section 52 (1)

substitute

- (1) The Minister may give written directions to the land agency about the principles that are to govern the exercise of its functions.

[1.230] Sections 53 (1) and 55 (a)

omit

section 52

substitute

section 44

[1.231] Sections 52 to 56 (as amended)

renumber as sections 44 to 48

[1.232] Part 4.3 heading

substitute

Part 4.3 Land agency governing board

[1.233] Sections 57 and 58

substitute

49 Establishment of land agency board

The land agency has a governing board (the *land agency board*).

50 Land agency board members

- (1) The land agency board has at least 5, but not more than 8, members.

Note 1 A chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the corporation is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

- (2) The Minister must try to ensure that the following disciplines and areas of expertise are represented among the members appointed:
 - (a) land development;
 - (b) economics;
 - (c) public law;
 - (d) finance or accounting;
 - (e) public administration;
 - (f) engineering.
- (3) The following people must not be appointed as members of the land agency board:
 - (a) the chief planning executive;
 - (b) a member of the authority staff.
- (4) The appointment of a member, other than the chief executive officer, must be for a term of not longer than 4 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

[1.234] Sections 59 to 61

omit

[1.235] Part 4.4

omit

[1.236] Part 4.5 heading

substitute

Part 4.4 **Land agency staff and consultants**

[1.237] Division 4.5.1

omit

[1.238] Division 4.5.2 heading

omit

[1.239] Section 72

omit

are

substitute

must be

[1.240] Sections 72 to 74 (as amended)

renumber as sections 51 to 53

[1.241] Section 75

omit

[1.242] Sections 76 and 77

renumber as sections 54 and 55

[1.243] Dictionary, definition of *business plan* and *chief executive officer*

substitute

chief executive officer means the chief executive officer of the land agency.

[1.244] Dictionary, definitions of *land agency*, *land agency board*, *land agency board member*, *land agency chairperson* and *land agency deputy chairperson*

substitute

land agency means the Land Development Agency.

land agency board means the governing board of the land agency.

land agency board member means a member of the land agency board.

[1.245] Dictionary, definition of *sustainable development*

substitute

sustainable development—see section 53.

Part 1.17 Planning and Land Regulation 2003

[1.246] Sections 5 to 8

omit

Part 1.18 Public Trustee Act 1985

[1.247] Section 1

substitute

1 Name of Act

This Act is the *Public Trustee Act 1985*.

[1.248] Section 4 (1), definition of *public trustee*

substitute

public trustee means—

- (a) the public servant who is the Public Trustee for the Australian Capital Territory under section 5; or
- (b) the Public Trustee for the Australian Capital Territory in its corporate capacity under section 8.

[1.249] Section 4 (1), definitions (as amended)

relocate to dictionary

[1.250] Section 4, remainder

substitute

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.

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)).

3 Notes

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

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

4 Administration Act definitions

A term defined in the Administration Act has the same meaning in this Act.

[1.251] Sections 5 and 6

substitute

5 Public trustee

The Public Trustee for the Australian Capital Territory is the person performing the duties of public trustee (however described) in the public service.

6 Deputy public trustee

- (1) The Deputy Public Trustee is the person performing the duties of deputy public trustee (however described) in the public service.
- (2) The deputy public trustee may exercise the functions of the public trustee, subject to any direction of the public trustee.
- (3) A person dealing with the deputy public trustee need not inquire whether the deputy public trustee, in exercising a function in relation to a dealing—
 - (a) was subject to a direction of the public trustee; or
 - (b) complied with a direction of the public trustee to which the deputy public trustee was subject.

[1.252] Section 8 (2)

substitute

- (2) The *Financial Management Act 1996*, section 73 (1) (Nature of relevant territory authorities) does not apply in relation to the public trustee.

[1.253] Section 10

substitute

10 Protection of public trustee etc from liability

(1) In this section:

official means—

- (a) a person who holds, or has held, the position of public trustee or deputy public trustee; or
 - (b) a person who is, or has been, an agent of the public trustee; or
 - (c) a public servant who is exercising, or has exercised, a function relating to the business or affairs of the public trustee.
- (2) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (3) Any liability that would, apart from this section, attach to the official attaches instead to the Territory.

[1.254] Sections 50 and 52

omit

[1.255] Section 53

substitute

53 Ending board member appointments

(1) This section applies to a board member other than the public trustee.

- (2) The Minister may end the member's appointment—
- (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
 - (f) if the member exercises the member's functions other than in accordance with section 53A (Honesty, care and diligence of board members); or
 - (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
 - (h) if the member contravenes section 53D (Disclosure of interests by board members); or
 - (i) if the member is absent from 3 consecutive meetings of the board, otherwise than on approved leave; or
 - (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (3) The Minister may also end the appointment of the member (the ***member concerned***) if the board tells the Minister in writing that it has resolved, by a majority of at least $\frac{2}{3}$ of the members, to recommend to the Minister that the member's appointment be ended.

- (4) The board may pass a resolution mentioned in subsection (3) only if—
- (a) at least 3 weeks written notice of the intention to consider the proposed resolution has been given to the member concerned; and
 - (b) the member concerned has been given an opportunity to make submissions and present documents to a meeting of the board; and
 - (c) if the member concerned has used the opportunity mentioned in paragraph (b)—a summary of the member’s submissions is recorded in the minutes of the board and a copy of any documents presented is included in the minutes.
- (5) A member who is a public servant ceases to hold office as a member if the member ceases to be a public servant.

53A Honesty, care and diligence of board members

In exercising the functions of a board member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

53B Conflict of interest

A board member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member’s functions.

53C Agenda to require disclosure of interest item

The agenda for each meeting of the board must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

53D Disclosure of interests by board members

- (1) If a board member has a material interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note **Material interest** is defined in s (4). The definition of *indirect interest* in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
- (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.

Example

Albert, Boris and Chloe are members of the board. They have an interest in an issue being considered at the board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris's interests are minor but Chloe has a direct financial interest in the issue.

The board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, since Chloe has a material interest she cannot be present for the consideration of the issue or take part in the decision.

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).

- (3) Any other board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).

(4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a board member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

53E Reporting of disclosed interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 53D (1), the senior member of the board must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the board under section 53D (2).
- (2) The senior member must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:

relevant committee means—

 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

53F Protection of board members from liability

- (1) A board member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to a board member attaches instead to the Territory.

53G Indemnification and exemption of board members

- (1) The public trustee must not exempt a board member (whether directly or through another entity) from liability to the public trustee or the Territory.
- (2) The public trustee must not indemnify a board member (whether directly or through another entity and whether by agreement or by making a payment) against any of the following liabilities incurred as a board member:
 - (a) a liability owed to the public trustee or the Territory;
 - (b) a liability owed to someone other than the public trustee or the Territory that did not arise from honest conduct.
- (3) The public trustee must not indemnify a board member (whether directly or through another entity and whether by agreement or by making a payment) against legal costs incurred as a member if the costs are incurred—
 - (a) in defending or resisting a proceeding if the person is found to have a liability for which the person could not be indemnified under subsection (2); or

Note A board member is not personally liable for certain acts done or omissions made honestly and without recklessness (see s 53F).

- (b) in defending or resisting a criminal proceeding in which the person is found guilty.

[1.256] Section 54

substitute

Division 6.2 Board meetings

54 Time and place of board meetings

- (1) Meetings of the board are to be held when and where the senior member decides.
- (2) The senior member must give the other members reasonable notice of the time and place of the meeting.

54A Presiding member at meetings

- (1) The senior member presides at all meetings at which the senior member is present.
- (2) If the senior member is absent, the member chosen by the members present presides.

54B Quorum at meetings

Business may be carried on at a meeting of the board only if at least 2 members are present.

54C Voting at meetings

- (1) At a meeting of the board each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

- (3) However, if only 2 members are present at the meeting, and they differ on a question arising at the meeting, the question must be deferred until the next meeting at which more than 2 members are present.

54D Conduct of meetings etc

- (1) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

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).

- (3) A board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the board, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication.

Example of electronic communication

email

- (5) The board must keep minutes of its meetings.

[1.257] Division 6.2

renumber as division 6.3

[1.258] 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:

- appoint
- establish
- exercise
- function
- liability
- month
- power
- public servant
- will.

Part 1.19 Remuneration Tribunal Act 1995

[1.259] Schedule 1, part 1.2

insert

- a member (including the chief executive officer) of the governing board of a territory authority, other than a member employed under the *Public Sector Management Act 1994*

Note For territory authorities with governing boards, see the *Financial Management Act 1996*, pt 9, note 1.

Part 1.20 Stadiums Authority Act 2000

[1.260] Section 2, note 1

substitute

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 in this Act.

[1.261] Part 2

substitute

Part 2 The authority

Note for pt 2

The governance of territory authorities, including the Stadiums authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

Division 2.1 Establishment and functions of authority

4 Establishment of authority

The Stadiums Authority (the *authority*) is established.

5 Functions of authority

The authority has the following functions:

- (a) owning, operating or managing sporting or entertainment facilities prescribed by regulation;

- (b) organising sporting, cultural, entertainment or commercial events or festivals, or conducting them at facilities mentioned in paragraph (a), either alone or with others;
- (c) providing facilities (including organisational or catering facilities) for an event or festival mentioned in paragraph (b) or for meetings or functions of any other kind, whether public or private;
- (d) operating on a sound commercial basis;
- (e) maximising the sustainable return to the Territory on its investment in the authority;
- (f) providing services to the community in accordance with an agreement with the Minister;
- (g) implementing any directions given to the authority by the Minister under this Act;
- (h) exercising any other function given to it under this Act or any other territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

6 Restrictions on dealings with assets

- (1) In this section:
subsidiary means a company that, for the Corporations Act, is a subsidiary of the authority.
- (2) The authority or a subsidiary must not, without the Treasurer's prior written approval—
 - (a) enter into a contract involving the payment or receipt of a total amount larger than \$500 000; or
 - (b) sell or otherwise dispose of, or mortgage or otherwise give security over, a significant asset; or

- (c) mortgage or give a charge over all, or a significant part, of its undertakings or assets.
- (3) An approval of the Treasurer may be given subject to conditions or restrictions stated in the approval.
- (4) The authority or a subsidiary must not dispose of any of its main undertakings unless the Legislative Assembly has, by resolution, approved the disposal.
- (5) A purported disposal in contravention of subsection (4) is void.
- (6) For this section, an asset, or part of the undertakings or assets, of the authority or a subsidiary is *significant* if—
 - (a) it is significant when interpreted in accordance with accounting standards relating to materiality ordinarily used in Australia when the decision about whether it is significant is made; or
 - (b) a document published by the authority or subsidiary identifies it as significant (however described); or
 - (c) a memorandum of understanding or other agreement between the Minister or Treasurer and the authority or subsidiary identifies it as significant (however described); or
 - (d) it is prescribed under the financial management guidelines under the *Financial Management Act 1996* for this section.
- (7) This section is additional to the *Financial Management Act 1996*, part 9 (Governance of territory authorities).

Division 2.2 Governing board

7 Establishment of governing board

The authority has a governing board.

8 Governing board members

The governing board has at least 5, but not more than 7, members.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the authority is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

9 Functions of governing board

The governing board has the following functions:

- (a) advising the Minister on all significant issues relating to the authority and its activities;
- (b) exercising any other function given to the board under this Act or any other territory law.

[1.262] Part 3 heading

substitute

Part 3 Authority staff and consultants

[1.263] Division 3.1

omit

[1.264] Division 3.2 heading

omit

[1.265] Sections 22 and 23

substitute

10 Staff

The authority's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

11 Consultants

- (1) The authority may engage consultants.
- (2) However, the authority must not enter into a contract of employment under this section.

[1.266] Parts 4 and 5

substitute

Part 4 Miscellaneous

12 Ministerial directions

- (1) The Minister may give the authority written directions in relation to the exercise of its functions.
- (2) Before giving a direction the Minister must—
 - (a) tell the governing board about the effect of the proposed direction; and

- (b) give the board a reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comments made by the board.
- (3) The Minister must present a copy of a direction to the Legislative Assembly within 6 sitting days after the day the Minister makes it.
- (4) On receiving a direction under this section, the authority must comply with it.
- (5) The Territory must reimburse the authority for the net reasonable expense of complying with a direction.
- (6) The *net reasonable expense* of complying with a direction is—
- (a) if the direction requires the authority to do something that, apart from the direction, it would not have done—the reasonable cost of, and the estimated revenue foregone in, complying with the direction; or
 - (b) if the direction requires the authority to do something in a way that is different from how the authority had intended to do it—the additional cost incurred, and the estimated revenue foregone, in doing the thing the activity in accordance with the direction; or
 - (c) if the direction requires the authority not to do something that, apart from the direction, it would have done—the difference (if any) between any estimated foregone revenue and the savings resulting from not doing the thing.
- (7) An amount is not payable under subsection (5) unless it is agreed to by the Minister and the authority or, failing agreement, is decided by the Treasurer.

13 Authority's annual report

A report prepared by the authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 12 (Ministerial directions) during the year; and
- (b) a statement by the authority about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

14 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

[1.267] Dictionary

substitute

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:

- exercise
- function.

authority means the Stadiums Authority.

governing board means the governing board of the authority.

Part 1.21 Taxation Administration Act 1999

[1.268] Section 97 (d) (v)

substitute

- (v) for the *Financial Management Act 1996*, section 104 (Act of grace payments) or section 105 (Waiver of debts etc)—the Treasurer;

Part 1.22 University of Canberra Act 1989

[1.269] Section 35 (2)

substitute

- (2) The *Financial Management Act 1996*, part 8 (Financial provisions for territory authorities) applies in relation to the university as if—
- (a) a reference to the ***governing board*** of the university were a reference to the council; and
 - (b) a reference to the ***chair*** of the governing board were a reference to the chancellor; and
 - (c) a reference to the ***chief executive officer*** of the university were a reference to the vice-chancellor; and
 - (d) the part were modified as set out in schedule 1.

[1.270] Schedule 1

substitute

Schedule 1 Modifications of Financial Management Act 1996, pt 8

(see s 35 (2) (d))

[1.1] Section 56

substitute

56 Responsibilities of governing boards

- (1) This section applies to a territory authority if the authority has a governing board.
- (2) The governing board of the territory authority is responsible, under the responsible Minister, for the efficient and effective financial management of the authority.
- (3) Without limiting subsection (2), the governing board of the territory authority is responsible, under the responsible Minister, for ensuring the following:
 - (a) that expenses incurred by the authority are properly authorised;
 - (b) that payments made by the authority are properly authorised and correctly made;
 - (c) that the staff of the authority comply with the requirements of this Act;

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including in this case the financial management guidelines (see Legislation Act, s 104).

- (d) that proper accounts and records are kept of the transactions and affairs of the authority in accordance with generally accepted accounting principles;
- (e) that adequate control is maintained over the assets of the authority and assets under the authority's control;

- (f) that adequate control is maintained over the incurring of liabilities by the authority.

[1.2] Section 57

substitute

57 Banking accounts of territory authorities

- (1) A territory authority may open 1 or more banking accounts for the purposes of the authority.
- (2) A territory authority must at all times maintain at least 1 banking account.

[1.3] Section 58

substitute

58 Investment by territory authorities

- (1) Funds not immediately required for the purposes of a territory authority may be invested—
- (a) on deposit with an authorised deposit-taking institution; or
- (b) in securities of the Territory, a State or the Commonwealth; or
- (c) by the Treasurer, for the territory authority, in an investment mentioned in section 38 (1) (a) to (e); or
- (d) in an investment prescribed under the financial management guidelines for this paragraph; or
- (e) on deposit with an eligible money market dealer under the Corporations Act; or
- (f) in bills of exchange that—
- (i) have been accepted by an authorised deposit-taking institution (an *ADI*); and

- (ii) have been endorsed by 1 or more ADIs; and
 - (iii) have not been endorsed by anyone other than an ADI.
- (2) However, the funds of the territory authority may only be invested under this section to increase or protect the financial wealth of the authority.
 - (3) Transfers between the territory banking account and the banking account of a territory authority to facilitate investments may be made without appropriation.
 - (4) Interest received by the Treasurer for the investment of funds of a territory authority must be paid to the territory authority.
 - (5) However, if an investment of funds of a territory authority is made or managed by a department, the department may deduct from the interest received by the department for the investment—
 - (a) a fee charged by the department for making or managing the investment; and
 - (b) expenses reasonably incurred by the department in making or managing the investment.
 - (6) Interest that is to be paid to a territory authority under subsection (4) may be paid direct to the territory authority or through the territory banking account.
 - (7) If interest to be paid to a territory authority is paid into the territory banking account under subsection (6), the interest may be paid to the authority from that account without further appropriation.
 - (8) This section does not apply to money held on trust by a territory authority.

[1.4] Section 61 (Territory authority statements of intent)

omit

[1.5] Section 62 (Presentation of statements of intent of territory authorities)

omit

[1.6] Section 63

substitute

63 Annual financial statements of territory authorities

- (1) A territory authority must prepare annual financial statements relating to its operations during each year.
- (2) The annual financial statements for a year must be prepared within—
 - (a) 2 months after 31 December in each year; or
 - (b) any further period that the Treasurer allows in writing.
- (3) The annual financial statements must be prepared in accordance with generally accepted accounting principles.
- (4) The annual financial statements must include—
 - (a) the financial statements required under the financial management guidelines; and
 - (b) any other statement necessary to fairly reflect the financial operations of the authority during the year and its financial position at the end of the year.

[1.7] Section 65

substitute

65 Audit of annual financial statements

- (1) The chief executive officer of a territory authority must give the auditor-general a copy of the annual financial statements of the authority for a financial year within 2 weeks after preparing them.

- (2) The copy of the financial statements given to the auditor-general must have endorsed on them, or attached to them, a signed copy of the statement of responsibility made for the financial statements under section 64.
- (3) The auditor-general must give the chief executive officer an audit opinion about the financial statements as soon as practicable after the auditor-general receives them.

[1.8] Section 66

substitute

66 Presentation of annual financial statements of territory authorities

- (1) This section applies if, under section 65 (3), the chief executive officer of a territory authority receives an audit opinion about annual financial statements of the authority.
- (2) Within 7 days after the day the chief executive officer receives the audit opinion, the chief executive officer must give the responsible Minister of the territory authority the following documents:
 - (a) a copy of the annual financial statements;
 - (b) a copy of the opinion;
 - (c) the authority's response (if any) to the opinion.
- (3) The responsible Minister must present the documents to the Legislative Assembly within 6 sitting days after the day the Minister receives them.

[1.9] Section 67

substitute

67 Treasurer may require interim financial statements etc

- (1) The Treasurer may, in writing, direct the chief executive officer of a territory authority to give the Minister and Treasurer financial or other statements relating to the authority.
- (2) The Treasurer must present a copy of the direction to the Legislative Assembly within 6 sitting days after the day when the Treasurer gives the direction.
- (3) The relevant person must prepare the statements required by the direction and give them to the responsible Minister and Treasurer within 1 month after the day the person receives the direction or, if a longer period for compliance is stated in the direction, within the longer period.
- (4) In this section:
relevant person, for a territory authority, means—
 - (a) if the authority has a governing board—the chair of the governing board; or
 - (b) if the authority does not have a governing board—the chief executive officer.

[1.10] Section 68 (Statements of performance of territory authorities)

omit

[1.11] Section 69 (Responsibility for territory authority statements of performance)

omit

[1.12] Section 70 (Scrutiny of territory authority statements of performance)

omit

[1.13] Section 71 (Presentation of territory authority statements of performance)

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 August 2005.

2 Notification

Notified under the Legislation Act on 26 October 2005.

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 Financial Management Legislation Amendment Bill 2005 which was passed by the Legislative Assembly on 18 October 2005.

Clerk of the Legislative Assembly