

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Financial Management Legislation Amendment Bill 2005

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2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Financial Management Legislation Amendment Bill 2005

A Bill for

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:

1 **1 Name of Act**

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

4 **2 Commencement**

5 (1) The following provisions commence on the day after this Act's
6 notification day:

- 7 • section 7
- 8 • section 9
- 9 • section 10
- 10 • section 14
- 11 • section 15
- 12 • section 17
- 13 • section 18
- 14 • sections 19 to 21
- 15 • section 22
- 16 • sections 23 to 26
- 17 • section 27
- 18 • sections 28 and 29
- 19 • section 30
- 20 • section 31
- 21 • section 37, so far as it inserts the following new sections:
 - 22 • section 63 (Annual financial statements of territory
23 authorities)
 - 24 • section 64 (Responsibility for annual financial statements
25 of territory authorities)
 - 26 • section 65 (Audit of annual financial statements of territory
27 authorities)
 - 28 • section 66 (Presentation of annual financial statements of
29 territory authorities)

- 1 • section 67 (Treasurer may require interim financial
2 statements etc for territory authorities)
- 3 • section 68 (Statements of performance of territory
4 authorities)
- 5 • section 69 (Responsibility for territory authority statements
6 of performance)
- 7 • section 70 (Scrutiny of territory authority statements of
8 performance)
- 9 • section 71 (Presentation of territory authority statements of
10 performance)
- 11 • section 37, so far as it omits the following sections:
- 12 • section 59 (Annual financial statements)
- 13 • section 60 (Responsibility for annual financial statements)
- 14 • section 61 (Audit of annual financial statements)
- 15 • section 62 (Presentation of annual financial statements)
- 16 • section 63 (Interim financial statements)
- 17 • sections 38 and 39
- 18 • section 41, so far as it inserts the following sections:
- 19 • part 11 heading (Transitional)
- 20 • section 109 (Financial Management Legislation
21 Amendment Act 2005—provisions with 1 July 2005
22 application)
- 23 • section 111 (Transitional regulations)
- 24 • section 48.

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

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

28 **3 Legislation amended**

29 This Act amends the *Financial Management Act 1996*.

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

1 **4 Section 3B**

2 *substitute*

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

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

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

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

13 (3) A declaration is a notifiable instrument.

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

15 **5 Section 8**

16 *substitute*

17 **8 Form of appropriations**

18 (1) An Appropriation Act may make separate appropriations in relation
19 to each department for—

20 (a) the provision of outputs by the department; and

21 (b) any capital injection to be provided to the department; and

22 (c) any payments to be made by the department on behalf of the
23 Territory.

24 (2) An Appropriation Act may make separate appropriations in relation
25 to a territory authority or territory-owned corporation for—

26 (a) the provision of outputs by the authority or corporation; and

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

3 **6 Budget papers**
4 **Section 10 (c)**

5 *substitute*

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

8 **7 Section 12**

9 *substitute*

10 **12 Departmental budgets**

11 (1) A proposed budget for a department for a financial year presented to
12 the Legislative Assembly under section 10 (b) must include—

13 (a) the financial statements required under the financial
14 management guidelines; and

15 (b) a statement that sets out the outputs and classes of outputs it is
16 proposed the department should provide during the year and
17 the performance criteria to be met by the department in
18 providing the outputs; and

19 (c) if, during the year, the department is to be given a capital
20 injection that must be repaid—a statement that—

21 (i) states that the capital injection is a capital injection; and

22 (ii) sets out the conditions under which the injection is to be
23 given, including the requirements about the time within
24 which it must be repaid.

25 (2) Subsection (1) (b) does not apply to the Legislative Assembly
26 secretariat.

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

11 **8 Section 12A**

12 *substitute*

13 **12A Territory authority and territory-owned corporation**
14 **budgets**

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

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

19 **9 Supplementary budget papers**
20 **Section 13 (2) to (5)**

21 *substitute*

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

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

23 **Example for par (b)**

24 the impact of revised economic forecasts

25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 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.

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

11 **12 Section 19C**

12 *substitute*

13 **19C Amendment of capital injection conditions**

- 14 (1) This section applies in relation to the conditions of a capital
15 injection set out in a statement included in a proposed budget for a
16 department, a territory authority or a territory-owned corporation for
17 a financial year under section 12 (1) (c) (ii) or
18 section 12A (1) (c) (ii).
- 19 (2) The Treasurer may, in writing, amend the conditions.
- 20 (3) An amendment must state the Treasurer's reasons for the
21 amendment.
- 22 (4) An amendment is a notifiable instrument.
- 23 *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

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

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

- 15 (6) In this section:

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

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

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

25 **14 Amendment of financial targets**
26 **Section 19E**

27 *omit*

| | | |
|----|-----------|---|
| 1 | 15 | Amendment of budgets |
| 2 | | Section 19F |
| 3 | | <i>omit</i> |
| 4 | 16 | Purpose and contents of pre-election budget update |
| 5 | | Section 20D (3) (b) |
| 6 | | <i>omit</i> |
| 7 | | public trading enterprises |
| 8 | | <i>substitute</i> |
| 9 | | the public trading enterprise sector |
| 10 | 17 | Annual financial statements of the Territory |
| 11 | | Section 22 (2) |
| 12 | | <i>omit</i> |
| 13 | | practice |
| 14 | | <i>substitute</i> |
| 15 | | principles |
| 16 | 18 | Responsibility for annual financial statements |
| 17 | | Section 23 (2) (b) |
| 18 | | <i>omit</i> |
| 19 | | practice |
| 20 | | <i>substitute</i> |
| 21 | | principles |

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

3 *omit*
4 a copy of

5 **20 Section 24 (2)**

6 *omit*
7 a copy of
8 *substitute*
9 the

10 **21 Section 24 (3) (a)**

11 *omit*
12 a copy of

13 **22 Division 3.2 heading**

14 *substitute*

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

17 **23 Annual financial statements of departments**
18 **Section 27 (2)**

19 *omit*
20 practice
21 *substitute*
22 principles

- 1 **24 Section 27 (3) (b)**
- 2 *omit*
- 3 **25 Section 27 (3) (c) to (e)**
- 4 *renumber as section 27 (3) (b) to (d)*
- 5 **26 Section 27 (4) and (5)**
- 6 *substitute*
- 7 (4) In this section:
- 8 *budget*, for a department for a financial year, means the budget for
- 9 the department for the year presented to the Legislative Assembly
- 10 under section 10 (b) (Budget papers).
- 11 **27 Section 28**
- 12 *substitute*
- 13 **28 Responsibility for annual financial statements of**
- 14 **departments**
- 15 (1) The annual financial statements of a department for a financial year
- 16 must have endorsed on them, or attached to them, a statement of
- 17 responsibility signed by the responsible chief executive.
- 18 (2) The statement of responsibility must state that, in the responsible
- 19 chief executive's opinion, the annual financial statements fairly
- 20 reflect the financial operations of the department during the
- 21 financial year and the financial position of the department at the end
- 22 of the year.
- 23 **28 Audit of financial statements of departments**
- 24 **Section 29 (1)**
- 25 *omit*
- 26 a copy of

1 **29 Section 29 (2)**

2 *substitute*

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

5 **30 Section 30A**

6 *substitute*

7 **30A Statements of performance of departments**

- 8 (1) As soon as practicable after the end of each financial year, each
9 department must prepare a statement of the performance of the
10 department in providing each class of outputs provided by it during
11 the year.

- 12 (2) The statement must—

13 (a) compare the performance of the department in providing each
14 class of the outputs with the forecast of the performance in the
15 department's budget for the year; and

16 (b) give particulars of the extent to which the performance criteria
17 set out in the budget for the provision of the outputs were met.

- 18 (3) In this section:

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

23 **30B Responsibility for departmental statements of
24 performance**

- 25 (1) A statement of performance of a department for a financial year
26 must have endorsed on it, or attached to it, a statement of
27 responsibility signed by the responsible chief executive.

- 1 (2) The statement of responsibility must state that, in the responsible
2 chief executive's opinion, the statement of performance fairly
3 reflects the performance of the department in providing each class
4 of outputs during the financial year.

5 **30C Scrutiny of departmental statements of performance**

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

16 **30D Presentation of departmental statements of performance**

- 17 (1) This section applies if, under section 30C (3), the responsible chief
18 executive of a department receives a report from the auditor-general
19 about a statement of performance of the department.
- 20 (2) The responsible Minister of the department must present the
21 following documents to the Legislative Assembly:
- 22 (a) a copy of the statement of performance;
- 23 (b) a copy of the report.
- 24 (3) The responsible Minister must present the documents to the
25 Legislative Assembly within 6 sitting days after the day the
26 responsible chief executive receives the report.

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

16 **31 Section 31**

17 *substitute*

18 **31 Responsibilities of chief executives of departments**

- 19 (1) The responsible chief executive of a department is accountable to
- 20 the responsible Minister of the department for the efficient and
- 21 effective financial management of the department.
- 22 (2) Without limiting subsection (1), the responsible chief executive of a
- 23 department is responsible, under the responsible Minister, for
- 24 ensuring—
- 25 (a) that money spent by the department is spent in accordance with
- 26 appropriations made for the department (including
- 27 appropriations available under section 34B); and

- 1 (b) that, as far as practicable, the operations of the department for
2 a financial year are consistent with, and comparable to, the
3 budget for the department for the year; and
- 4 (c) that the officers and employees of the department comply with
5 this Act (including the financial management guidelines); and
- 6 *Note* A reference to an Act includes a reference to the statutory
7 instruments made or in force under the Act, including any
8 guideline (see Legislation Act, s 104).
- 9 (d) that proper accounts and records are kept of the transactions
10 and affairs of the department in accordance with generally
11 accepted accounting principles; and
- 12 (e) that adequate control is maintained over the assets of the
13 department and assets in the control of the department; and
- 14 (f) that adequate control is maintained over the incurring of
15 liabilities by the department.
- 16 (3) A report prepared under the *Annual Reports (Government Agencies)*
17 *Act 2004* for a financial year by the responsible chief executive of a
18 department must include an explanation of material variations
19 between the actual results of the department for the year and the
20 budget for the department for the year.
- 21 (4) In this section:
- 22 *budget*, for a department for a financial year, means the budget for
23 the department for the year presented to the Legislative Assembly
24 under section 10 (b) (Budget papers) and, if that budget has been
25 amended under this Act, the budget as amended.

1 **32 Payments from territory banking account**
2 **Section 37 (1)**

3 *substitute*

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

8 **33 Section 37 (2) (d)**

9 *substitute*

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

13 **34 New section 37 (3)**

14 *insert*

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

17 **35 New sections 51A, 51B and 51C**

18 *insert*

19 **51A Transfer of departmental trust banking accounts**

- 20 (1) This section applies if the Treasurer believes that it is desirable,
21 because of changes in departmental responsibilities, to transfer a
22 departmental trust banking account from a department to another
23 department.
- 24 (2) The Treasurer may, in writing, direct the responsible chief executive
25 of the department that holds the account to arrange for it to be
26 transferred to the other department.

1 (3) If a chief executive receives a direction under subsection (2), the
2 chief executive must comply with it.

3 (4) An account transferred in accordance with the direction becomes a
4 trust banking account of the department to which it is transferred.

5 **51B Transfers between trust banking accounts—changes in**
6 **departmental responsibilities**

7 (1) This section applies if the Treasurer believes that it is necessary,
8 because of changes in departmental responsibilities, to transfer an
9 amount held in a departmental trust banking account (the *first*
10 *account*) to a trust banking account of another department.

11 (2) The Treasurer may, in writing, direct the responsible chief executive
12 of the department that holds the first account to transfer the amount.

13 (3) If a chief executive receives a direction under subsection (2), the
14 chief executive must comply with it.

15 **51C Transfers between trust banking accounts—investment**

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

18 **36 Section 52**

19 *substitute*

20 **52 Transfers between trust banking account and territory**
21 **banking account**

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

24 (a) to facilitate investment of the trust money; or

25 (b) to make a payment required by section 53A (6) (Unclaimed
26 trust money).

1 **37 Part 8**

2 *substitute*

3 **Part 8 Financial provisions for territory**
4 **authorities**

5 **54 Application—pt 8**

6 (1) This part applies to the following territory authorities:

- 7 • ACT Gambling and Racing Commission
- 8 • ACT Health Promotion Authority
- 9 • ACT Insurance Authority
- 10 • ACTION Authority
- 11 • Australian Capital Territory Public Cemeteries Authority
- 12 • Australian Capital Tourism Corporation
- 13 • Building and Construction Industry Training Fund Authority
- 14 • Canberra Institute of Technology
- 15 • Cleaning Industry Long Service Leave Authority
- 16 • Construction Industry Long Service Leave Authority
- 17 • Cultural Facilities Corporation
- 18 • Exhibition Park Corporation
- 19 • Independent Competition and Regulatory Commission for the
- 20 Australian Capital Territory
- 21 • Land Development Agency
- 22 • Legal Aid Commission (A.C.T.)
- 23 • Public Trustee for the Australian Capital Territory
- 24 • Stadiums Authority
- 25 • University of Canberra.

26 (2) This part also applies to a territory authority prescribed by the
27 financial management guidelines.

1 **55** **Responsibilities of chief executive officers of territory**
2 **authorities**

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

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

- 7 (2) The chief executive officer of the territory authority is responsible,
8 under the responsible Minister, for the efficient and effective
9 financial management of the authority.

- 10 (3) Without limiting subsection (2), the chief executive officer of the
11 territory authority is responsible, under the responsible Minister, for
12 ensuring the following:

13 (a) that the expenses incurred by the authority are properly
14 authorised;

15 (b) that, if an appropriation is made in relation to the authority, any
16 amount of the appropriation spent by the authority is spent in
17 accordance with the appropriation;

18 (c) that, as far as practicable, the operations of the authority during
19 a financial year are consistent with, and comparable to, the
20 estimates in the authority's statement of intent for the year.

21 (d) that payments made by the authority are properly authorised
22 and correctly made;

23 (e) that the staff of the authority comply with the requirements of
24 this Act;

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

28 (f) that proper accounts and records are kept of the transactions
29 and affairs of the authority in accordance with generally
30 accepted accounting principles;

- 1 (g) that adequate control is maintained over the assets of the
2 authority and assets under the authority's control;
- 3 (h) that adequate control is maintained over the incurring of
4 liabilities by the authority.
- 5 (4) A report prepared by the territory authority under the *Annual*
6 *Reports (Government Agencies) Act 2004* for a financial year must
7 include an explanation of material variations between the actual
8 results of the authority for the year and the estimates in the
9 authority's statement of intent for the year.

10 **56 Responsibilities of governing boards of territory**
11 **authorities**

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

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

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

- 19 (3) Without limiting subsection (2), the governing board of the territory
20 authority is responsible, under the responsible Minister, for ensuring
21 the following:

- 22 (a) that expenses incurred by the authority are properly authorised;
- 23 (b) that, if an appropriation is made in relation to the authority, any
24 amount of the appropriation spent by the authority is spent in
25 accordance with the appropriation;
- 26 (c) that, as far as practicable, the operations of the authority during
27 a financial year are consistent with, and comparable to, the
28 estimates in the authority's statement of intent for the year;
- 29 (d) that payments made by the authority are properly authorised
30 and correctly made;

- 1 (e) that the staff of the authority comply with the requirements of
2 this Act;
- 3 *Note* A reference to an Act includes a reference to the statutory
4 instruments made or in force under the Act, including in this case
5 the financial management guidelines (see Legislation Act, s 104).
- 6 (f) that proper accounts and records are kept of the transactions
7 and affairs of the authority in accordance with generally
8 accepted accounting principles;
- 9 (g) that adequate control is maintained over the assets of the
10 authority and assets under the authority's control;
- 11 (h) that adequate control is maintained over the incurring of
12 liabilities by the authority.
- 13 (4) A report prepared by the territory authority under the *Annual*
14 *Reports (Government Agencies) Act 2004* for a financial year must
15 include an explanation of material variations between the actual
16 results of the authority for the year and the estimates in the
17 authority's statement of intent for the year.

18 **57 Banking accounts of territory authorities**

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

- 1 **58 Investment by territory authorities**
- 2 (1) Funds not immediately required for the purposes of a territory
3 authority may be invested—
- 4 (a) on deposit with an authorised deposit-taking institution; or
- 5 (b) in Territory, State or Commonwealth securities; or
- 6 (c) by the Treasurer, for the territory authority, in an investment
7 mentioned in section 38 (1) (a) to (e); or
- 8 (d) in an investment prescribed for this paragraph.
- 9 (2) However, the funds of the territory authority may only be invested
10 under this section to increase or protect the financial wealth of the
11 authority.
- 12 (3) Transfers between the territory banking account and the banking
13 account of a territory authority to facilitate investments may be
14 made without appropriation.
- 15 (4) Interest received by the Treasurer for the investment of funds of a
16 territory authority must be paid to the territory authority.
- 17 (5) However, if an investment of funds of a territory authority is made
18 or managed by a department, the department may deduct from the
19 interest received by the department for the investment—
- 20 (a) a fee charged by the department for making or managing the
21 investment; and
- 22 (b) expenses reasonably incurred by the department in making or
23 managing the investment.
- 24 (6) Interest that is to be paid to a territory authority under subsection (4)
25 may be paid direct to the territory authority or through the territory
26 banking account.
- 27 (7) If interest to be paid to a territory authority is paid into the territory
28 banking account under subsection (6), the interest may be paid to
29 the authority from that account without further appropriation.

1 (8) This section does not apply to money held on trust by a territory
2 authority.

3 **59 Borrowing by territory authorities**

4 (1) The Treasurer may, on the terms and conditions the Treasurer
5 considers appropriate—

6 (a) borrow money for a territory authority; or

7 (b) lend public money to a territory authority.

8 (2) A borrowing may be secured by the territory authority's assets
9 approved by the Treasurer for this section.

10 (3) A territory authority may arrange an overdraft or credit facility only
11 with the written approval of the Treasurer.

12 (4) A loan under subsection (1) (b) may be made only from—

13 (a) money appropriated for the purpose of making the loan; or

14 (b) money appropriated for purposes that include the purpose of
15 making the loan.

16 (5) However, subsection (4) does not apply to an overdraft or credit
17 facility for a territory authority from the territory banking account
18 that is approved, in writing, by the Treasurer for the authority.

19 (6) The Treasurer may approve an overdraft or credit facility for a
20 territory authority under subsection (5) only if satisfied that it is for
21 a purpose consistent with a function of the authority.

22 (7) An approval under subsection (5) must state, for the overdraft or
23 credit facility—

24 (a) each purpose for which it may be used; and

25 (b) the maximum amount that may be outstanding at any time; and

26 (c) conditions about—

27 (i) the repayment of principal; and

- 1 (ii) the interest rate; and
2 (iii) the repayment of interest.
- 3 (8) An approval under subsection (5) may also state any other condition
4 that the Treasurer requires.
- 5 (9) An approval under subsection (5) is a disallowable instrument.
- 6 *Note* A disallowable instrument must be notified, and presented to the
7 Legislative Assembly, under the Legislation Act.
- 8 (10) An overdraft or credit facility approved under subsection (5) must
9 be reviewed annually by the Treasurer.

10 **60 Guarantees by territory authorities**

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

13 **61 Territory authority statements of intent**

- 14 (1) A territory authority must give the Treasurer a statement (a
15 *statement of intent*) for each financial year.
- 16 (2) A territory authority must consult the responsible Minister in
17 preparing a statement of intent.
- 18 (3) A territory authority must show the responsible Minister a copy of
19 the proposed statement of intent, and take into consideration any
20 comment by the Minister, before giving it to the Treasurer.
- 21 (4) A statement of intent must be—
- 22 (a) in the form the Treasurer requires; and
- 23 (b) as agreed between the relevant person for the authority and the
24 Treasurer; and
- 25 (c) provided to the Treasurer within the period the Treasurer
26 requires.

-
- 1 (5) A statement of intent for a financial year must include the following:
- 2 (a) the financial statements required under the financial
3 management guidelines;
- 4 (b) a statement of the objectives of the authority for the year, and
5 each of the next 3 financial years;
- 6 (c) a statement of the nature and scope of the activities to be
7 carried out by the authority during the year, and each of the
8 next 3 financial years;
- 9 (d) the performance criteria and other measures by which the
10 performance of the authority may be assessed against its
11 objectives for the year, and each of the next 3 financial years;
- 12 (e) an assessment of the performance (or estimated performance)
13 of the authority in the previous financial year against its
14 objectives for that year;
- 15 (f) the results of any review under section 59 (10) in the previous
16 financial year of an overdraft or credit facility approved for the
17 authority;
- 18 (g) any other information the Treasurer directs.
- 19 (6) In this section:
- 20 *relevant person*, for a territory authority, means—
- 21 (a) if the authority has a governing board—the chair of the
22 governing board; or
- 23 (b) if the authority does not have a governing board—the chief
24 executive officer.

- 1 **62 Presentation of statements of intent of territory**
2 **authorities**
- 3 (1) The Treasurer must present to the Legislative Assembly, with the
4 budget papers for a financial year, a statement of intent for each
5 territory authority for the year.
- 6 (2) If the Treasurer does not present to the Legislative Assembly, with
7 the budget papers for a financial year, a statement of intent for a
8 territory authority, the Treasurer must—
- 9 (a) as soon as practicable after the budget papers are presented,
10 explain to the Legislative Assembly why the statement of
11 intent was not presented; and
- 12 (b) present the statement of intent to the Legislative Assembly as
13 soon as practicable after presenting the budget papers.
- 14 **63 Annual financial statements of territory authorities**
- 15 (1) As soon as practicable after the end of each financial year, each
16 territory authority must prepare annual financial statements for its
17 operations during the year.
- 18 (2) The annual financial statements must be prepared in accordance
19 with generally accepted accounting principles and in a form that
20 facilitates a comparison between the financial operations of the
21 territory authority during the financial year and the estimates of the
22 operations in the authority’s statement of intent for the year.
- 23 (3) The annual financial statements must include—
- 24 (a) the financial statements required under the financial
25 management guidelines; and
- 26 (b) if a change was made during the year to the conditions of a
27 capital injection set out under section 12A (1) (c) (ii) (Territory
28 authority and territory-owned corporation budgets) in a
29 statement included in a proposed budget for the authority for a

1 financial year—a statement of the change and the reasons for
2 it; and

3 (c) any other statement necessary to fairly reflect the financial
4 operations of the authority during the year and its financial
5 position at the end of the year.

6 **64 Responsibility for annual financial statements of territory**
7 **authorities**

8 (1) The annual financial statements of a territory authority for a
9 financial year must have endorsed on them, or attached to them, a
10 statement of responsibility signed by the relevant person for the
11 authority.

12 (2) The statement of responsibility must—

13 (a) include a statement of the relevant person's responsibility for
14 the preparation of the annual financial statements and the
15 judgments exercised in preparing them; and

16 (b) state that, in the relevant person's opinion, the financial
17 statements fairly reflect the financial operations of the
18 authority during the financial year and the financial position of
19 the authority at the end of the year.

20 (3) In this section:

21 *relevant person*, for the territory authority, means—

22 (a) if the authority has a governing board—the chair of the
23 governing board; or

24 (b) if the authority does not have a governing board—the chief
25 executive officer.

- 1 **65 Audit of annual financial statements of territory**
2 **authorities**
- 3 (1) The chief executive officer of a territory authority must give the
4 auditor-general the annual financial statements of the authority for a
5 financial year within the prescribed period after the end of the year.
- 6 (2) The financial statements given to the auditor-general must have
7 endorsed on them, or attached to them, the statement of
8 responsibility made for them under section 64.
- 9 (3) The auditor-general must give the chief executive officer an audit
10 opinion about the financial statements as soon as practicable after
11 the auditor-general receives them.
- 12 **66 Presentation of annual financial statements of territory**
13 **authorities**
- 14 (1) This section applies if, under section 65 (3), the chief executive
15 officer of a territory authority receives an audit opinion about annual
16 financial statements of the authority.
- 17 (2) Within 7 days after the day the chief executive officer receives the
18 audit opinion, the chief executive officer must give the responsible
19 Minister of the territory authority the following documents:
- 20 (a) a copy of the annual financial statements;
- 21 (b) a copy of the opinion;
- 22 (c) the authority's response (if any) to the opinion.
- 23 (3) The responsible Minister must present the documents to the
24 Legislative Assembly within 6 sitting days after the day the Minister
25 receives them.

1 **67** **Treasurer may require interim financial statements etc for**
2 **territory authorities**

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

18 **68** **Statements of performance of territory authorities**

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

- 1 (3) For a prescribed territory authority, the statement must also include
2 a statement of the performance of the authority in providing each
3 class of outputs provided by it during the year and, in particular—
4 (a) compare the performance of the territory authority in providing
5 each class of the outputs with the forecast of the performance
6 in the authority’s budget for the year; and
7 (b) give particulars of the extent to which the performance criteria
8 set out in the budget for the provision of the outputs were met.
9 (4) In this section:
10 *budget*, for the territory authority, means the budget for the
11 authority for the financial year presented to the Legislative
12 Assembly under section 10 (c) (Budget papers) and, if that budget
13 has been amended under this Act, the budget as amended.
14 *prescribed territory authority* means a territory authority prescribed
15 for section 12A (1) (b) (Territory authority and territory-owned
16 corporation budgets).

17 **69 Responsibility for territory authority statements of**
18 **performance**

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

- 1 (3) In this section:
2 *relevant person*, for the territory authority, means—
3 (a) if the authority has a governing board—the chair of the
4 governing board; or
5 (b) if the authority does not have a governing board—the chief
6 executive officer.

7 **70 Scrutiny of territory authority statements of performance**

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

19 **71 Presentation of territory authority statements of**
20 **performance**

- 21 (1) This section applies if, under section 70 (3), the chief executive
22 officer of a territory authority receives a report from the
23 auditor-general about a statement of performance of the authority.
24 (2) Within 7 days after receiving the report, the chief executive officer
25 must give the responsible Minister of the territory authority the
26 following documents:
27 (a) a copy of the statement of performance;
28 (b) a copy of the report;

- 1 (c) the authority's response (if any) to the report.
- 2 (3) The responsible Minister must present the documents to the
- 3 Legislative Assembly within 6 sitting days after the day the Minister
- 4 receives them.

5 **38 Part 9**

6 *renumber as part 10*

7 **39 Sections 64 to 68**

8 *renumber as sections 104 to 108*

9 **40 New part 9**

10 *insert*

11 **Part 9 Governance of territory**

12 **authorities**

13 *Notes for pt 9*

14 *Note 1* Div 9.1 and div 9.5 apply to a territory authority, whether or not it has a

15 governing board, unless the establishing Act otherwise provides (see eg

16 the *Legal Aid Act 1977*, s 94A).

17 *Note 2* The Legislation Act contains provisions relevant to territory authorities,

18 including the following:

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

26 *Note 3* The *Remuneration Tribunal Act 1995* allows terms and conditions for

27 people appointed to be set by determination under that Act.

1 **Division 9.1 Definitions and important concepts**

2 **72 Definitions—pt 9**

3 In this part:

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

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

9 *financial year*, for a territory authority, means—

10 (a) a period of 12 months beginning on 1 July; or

11 (b) if the territory authority has, in writing, fixed another 12-month
12 period as its financial year—the period fixed.

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

15 *material interest*—see section 88 (4).

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

19 **73 Nature of relevant territory authorities**

20 (1) A relevant territory authority—

21 (a) is a corporation; and

22 (b) may sue and be sued in its corporate name; and

23 (c) may have a seal.

24 (2) A relevant territory authority represents the Territory when
25 exercising its functions, unless the establishing Act for the authority
26 or another territory law otherwise provides.

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

3 **74 Powers of territory authorities generally**

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

7 **Examples**

- 8 1 to enter into a contract
9 2 to own, deal with and dispose of property
10 3 to act as trustee

11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).

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

21 **Example for par (b)**

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

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

- 1 (b) give a relevant territory authority a right that a territory law or
2 a law of another jurisdiction denies to the authority.
- 3 (5) In this section:
- 4 *another jurisdiction* means the Commonwealth, a State, another
5 Territory or a foreign country.
- 6 **75 Execution of documents and assumptions people dealing**
7 **with relevant territory authority may make**
- 8 (1) In this section:
- 9 *applied Corporations Act provisions* means the following
10 provisions of the Corporations Act:
- 11 (a) section 127 (which is about the execution of documents by a
12 company);
- 13 (b) section 128 (which is about a person's entitlement to make
14 certain assumptions in dealing with a company);
- 15 (c) section 129 (which is about the assumptions that may be
16 made).
- 17 (2) The applied Corporations Act provisions apply to a relevant territory
18 authority as if—
- 19 (a) a reference to a *company* were a reference to the authority; and
- 20 (b) a reference to a *common seal* were a reference to any seal of
21 the authority; and
- 22 (c) a reference to a *director* were a reference to a board member;
23 and
- 24 (d) a reference to a company's *constitution* were a reference to
25 this Act and the establishing Act; and
- 26 (e) a reference to an *officer* of a company were a reference to the
27 chief executive officer and any member of staff of the
28 authority; and

1 (f) a reference to *information available to the public from ASIC*
2 were a reference to information available to the public from the
3 Territory; and

4 (g) any other necessary changes, and any change prescribed by
5 regulation, were made.

6 **76 Governing board of territory authority**

7 (1) A territory authority has a governing board if the establishing Act
8 for the authority establishes a governing board for the authority.

9 (2) To remove any doubt, only the following territory authorities have
10 governing boards:

- 11 • ACT Gambling and Racing Commission
- 12 • ACT Health Promotion Authority
- 13 • ACTION Authority
- 14 • Australian Capital Territory Public Cemeteries Authority
- 15 • Australian Capital Tourism Corporation
- 16 • Building and Construction Industry Training Fund Authority
- 17 • Cleaning Industry Long Service Leave Authority
- 18 • Construction Industry Long Service Leave Authority
- 19 • Cultural Facilities Corporation
- 20 • Exhibition Park Corporation
- 21 • Land Development Agency
- 22 • Stadiums Authority
- 23 • a territory authority prescribed by the financial management
24 guidelines.

25 **77 Role of governing board**

26 (1) If a territory authority has a governing board, the governing board
27 has the following functions:

28 (a) setting the authority's policies and strategies;

1 (b) governing the authority consistently with the authority's
2 establishing Act and other relevant legislation;

3 (c) ensuring, as far as practicable, that the authority operates in a
4 proper, effective and efficient way;

5 (d) ensuring, as far as practicable, that the authority complies with
6 applicable governmental policies (if any).

7 **Examples of policies for par (a)**

8 1 risk management

9 2 communication with government

10 3 corporate planning

11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).

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

15 **Division 9.2 Governing board member**
16 **appointments**

17 **78 Appointment of governing board members generally**

18 (1) This section applies to the appointment of the members of the
19 governing board of a territory authority, other than the CEO.

20 (2) The responsible Minister for the territory authority may appoint the
21 members.

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

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

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

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

19 **79 Appointment of chair and deputy chair**

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

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

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

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

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

6 **80 Appointment of CEO of authority with governing board**

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

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

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

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

- 1 **81 Ending board member appointments**
- 2 (1) This section applies to a governing board member other than the
- 3 CEO.
- 4 (2) The responsible Minister may end the member’s appointment—
- 5 (a) if the member contravenes a territory law; or
- 6 (b) for misbehaviour; or
- 7 (c) if the member becomes bankrupt or executes a personal
- 8 insolvency agreement; or
- 9 (d) if the member is convicted, or found guilty, in Australia of an
- 10 offence punishable by imprisonment for at least 1 year; or
- 11 (e) if the member is convicted, or found guilty, outside Australia
- 12 of an offence that, if it had been committed in the ACT, would
- 13 be punishable by imprisonment for at least 1 year; or
- 14 (f) if the member exercises the member’s functions other than in
- 15 accordance with section 85 (Honesty, care and diligence of
- 16 governing board members); or
- 17 (g) if the member fails to take all reasonable steps to avoid being
- 18 placed in a position where a conflict of interest arises during
- 19 the exercise of the member’s functions; or
- 20 (h) if the member contravenes section 88 (Disclosure of interests
- 21 by governing board members); or
- 22 (i) if the member is absent from 3 consecutive meetings of the
- 23 board, otherwise than on approved leave; or
- 24 (j) for physical or mental incapacity, if the incapacity substantially
- 25 affects the exercise of the member’s functions.
- 26 *Note* A person’s appointment also ends if the person resigns (see Legislation
- 27 Act, s 210).

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

18 **Division 9.3** **Functions of governing board** 19 **members**

20 **82** **Chair's functions**

- 21 The chair of the governing board of a territory authority has the
22 following functions:
- 23 (a) managing the affairs of the governing board;
- 24 (b) ensuring, as far as practicable, that there is a good working
25 relationship between the governing board and management of
26 the authority;
- 27 (c) ensuring the responsible Minister is kept informed about the
28 operations of the authority.

1 **83 Deputy chair’s functions**

2 (1) If the chair of the governing board of a territory authority is absent
3 or cannot for any reason exercise the functions of the chair, the
4 deputy chair of the governing board must exercise the functions of
5 the chair.

6 (2) However, this section does not apply to a territory authority if the
7 establishing Act for the authority provides that it need not have a
8 deputy chair.

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

10 **84 CEO’s functions**

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

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

15 **Example of implementation of statement of intent**
16 achieving objectives in statement of intent

17 *Note* An example is part of the Act, is not exhaustive and may extend,
18 but does not limit, the meaning of the provision in which it
19 appears (see Legislation Act, s 126 and s 132).

20 (b) managing the day-to-day operations of the authority in
21 accordance with—

22 (i) applicable governmental policies (if any); and

23 (ii) the policies of the authority set by the board; and

24 (iii) each legal requirement that applies to the authority;

25 **Example for par (iii)**
26 a direction by the independent competition and regulatory commission that
27 relates to the authority

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

1 (d) immediately advising the board about significant events.

2 (2) In this section:

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

6 **85 Honesty, care and diligence of governing board members**

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

11 **86 Conflicts of interest by governing board members**

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

15 **87 Agenda to require disclosure of interest item**

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

19 **88 Disclosure of interests by governing board members**

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

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

1 (2) The disclosure must be recorded in the governing board's minutes
2 and, unless the board otherwise decides, the member must not—

3 (a) be present when the board considers the issue; or

4 (b) take part in a decision of the board on the issue.

5 **Example**

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

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

12 • Albert may be present when the board considers the issue but not take part in
13 the decision

14 • Boris may be present for the consideration and take part in the decision.

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

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

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

24 (4) In this section:

25 *associate*, of a person, means—

26 (a) the person's business partner; or

27 (b) a close friend of the person; or

28 (c) a family member of the person.

29 *executive officer*, of a corporation, means a person (however
30 described) who is concerned with, or takes part in, the corporation's

1 management, whether or not the person is a director of the
2 corporation.

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

- 6 (a) an associate of the person;
- 7 (b) a corporation if the corporation has not more than
8 100 members and the person, or an associate of the person, is a
9 member of the corporation;
- 10 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 11 (d) a corporation if the person, or an associate of the person, is an
12 executive officer of the corporation;
- 13 (e) the trustee of a trust if the person, or an associate of the person,
14 is a beneficiary of the trust;
- 15 (f) a member of a firm or partnership if the person, or an associate
16 of the person, is a member of the firm or partnership;
- 17 (g) someone else carrying on a business if the person, or an
18 associate of the person, has a direct or indirect right to
19 participate in the profits of the business.

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

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

- 1 **89 Reporting of disclosed governing board interests to**
2 **Minister**
- 3 (1) Within 3 months after the day a material interest is disclosed under
4 section 88 (1), the chair of the governing board must report to the
5 responsible Minister in writing about—
- 6 (a) the disclosure; and
7 (b) the nature of the interest disclosed; and
8 (c) any decision by the board under section 88 (2).
- 9 (2) The chair must also give the responsible Minister, not later than
10 31 days after the end of each financial year, a statement that sets out
11 the information given to the Minister in reports under subsection (1)
12 that relate to disclosures made during the previous financial year.
- 13 (3) The responsible Minister must give a copy of the statement to the
14 relevant committee of the Legislative Assembly within 31 days after
15 the day the Minister receives the statement.
- 16 (4) In this section:
- 17 ***relevant committee*** means—
- 18 (a) a standing committee of the Legislative Assembly nominated
19 by the Speaker for subsection (3); or
- 20 (b) if no nomination under paragraph (a) is in effect—the standing
21 committee of the Legislative Assembly responsible for public
22 accounts.
- 23 **90 Protection of governing board members from liability**
- 24 (1) A governing board member is not civilly liable for anything done or
25 omitted to be done honestly and without recklessness—
- 26 (a) in the exercise of a function under a territory law; or
27 (b) in the reasonable belief that the act or omission was in the
28 exercise of a function under a territory law.

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

4 **91 Indemnification and exemption of governing board**
5 **members**

- 6 (1) A territory authority must not exempt a governing board member
7 (whether directly or through another entity) from liability to the
8 authority.

- 9 (2) A territory authority must not indemnify a governing board member
10 (whether directly or through another entity and whether by
11 agreement or by making a payment) against any of the following
12 liabilities incurred as a board member:

13 (a) a liability owed to the authority;

14 (b) a liability owed to someone other than the authority that did
15 not arise from honest conduct.

- 16 (3) A territory authority must not indemnify a governing board member
17 (whether directly or through another entity and whether by
18 agreement or by making a payment) against legal costs incurred as a
19 member if the costs are incurred—

20 (a) in defending or resisting a proceeding if the person is found to
21 have a liability for which the person could not be indemnified
22 under subsection (2); or

23 *Note* A governing board member is not personally liable for certain
24 acts done or omissions made honestly and without recklessness
25 (see s 90).

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

- 28 (4) In this section:

29 ***authority*** includes a subsidiary (if any) of the authority.

- 1 **92 Compensation for exercise of functions etc**
- 2 (1) A person may claim compensation from the Territory if the person
- 3 suffers loss because of the exercise, or purported exercise, of a
- 4 function under this part or the establishing Act.
- 5 (2) Compensation may be claimed and ordered in a proceeding for
- 6 compensation brought in a court of competent jurisdiction.
- 7 (3) A court may order the payment of reasonable compensation for the
- 8 loss or expense only if it is satisfied it is just to make the order in the
- 9 circumstances of the particular case.
- 10 (4) A regulation may prescribe matters that may, must or must not be
- 11 taken into account by the court in considering whether it is just to
- 12 make the order.

13 **Division 9.4 Governing board meetings**

- 14 **93 Time and place of governing board meetings**
- 15 (1) Meetings of the governing board of a territory authority are to be
- 16 held when and where it decides.
- 17 (2) However, the governing board must meet—
- 18 (a) at least once every 3 months; or
- 19 (b) if the establishing Act requires the governing board to meet
- 20 more frequently—at the times required under the establishing
- 21 Act.
- 22 (3) The chair—
- 23 (a) may at any time call a meeting of the governing board; and
- 24 (b) must call a meeting if asked by the Minister or at least
- 25 2 members.
- 26 (4) The chair must give the other members reasonable notice of the time
- 27 and place of a meeting called by the chair.

1 **94 Presiding member at governing board meetings**

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

9 **95 Quorum at governing board meetings**

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

15 **96 Voting at governing board meetings**

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

22 **97 Conduct of governing board meetings etc**

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

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

5 **Examples**

6 a phone link, a satellite link

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

- 10 (3) A governing board member who takes part in a meeting conducted
11 under subsection (2) is taken, for all purposes, to be present at the
12 meeting.

- 13 (4) A resolution is a valid resolution of the governing board, even if it is
14 not passed at a meeting of the board, if all members agree to the
15 proposed resolution in writing or by electronic communication.

16 **Example of electronic communication**

17 email

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

19 **Division 9.5 Requirements and obligations for**
20 **territory authorities**

21 **98 Limitations on authorities forming corporations etc**

- 22 (1) A relevant territory authority must not do any of the following
23 without the Treasurer's prior written approval:

24 (a) subscribe for, or purchase, shares in or debentures or other
25 securities of, a corporation;

26 (b) form, or take part in the formation of, a corporation.

- 27 (2) An approval under subsection (1)—

28 (a) must relate only to a particular corporation or proposed
29 corporation; and

- 1 (b) may be given subject to the conditions or restrictions stated in
2 the approval.
- 3 (3) If a relevant territory authority does something mentioned in
4 subsection (1), the authority must tell the responsible Minister
5 within 2 weeks after the day the authority does the thing.
- 6 (4) The responsible Minister must—
- 7 (a) prepare a written statement setting out details of, and reasons
8 for, the relevant territory authority's action; and
- 9 (b) present the statement to the Legislative Assembly within
10 6 sitting days after the day the Minister is told about the action.
- 11 (5) A statement need not include any material that is commercially
12 sensitive.
- 13 (6) However, if commercially sensitive information is not included in
14 the statement, the responsible Minister must, when presenting the
15 statement to the Legislative Assembly, also present a further
16 statement setting out the general nature of the information and the
17 reason for its non-inclusion in the statement.

18 **99 Limitations on authorities taking part in joint ventures**
19 **and trusts**

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

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

14 **100 Corporations, joint ventures and trusts in which authority**

15 **has interest**

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

26 *Note* The *Auditor-General Act 1996*, s 14 allows the auditor-general to

27 require a person to give to the auditor-general information and

28 documents.

- 1 (3) In this section—
2 *controlling interest*—see the *Auditor-General Act 1996*, section 5.
- 3 **101 Obligation of authorities to tell Minister about significant**
4 **events**
- 5 (1) A relevant territory authority must, as soon as practicable, tell the
6 responsible Minister of any significant event that affects, or seems
7 likely to affect—
8 (a) the value of the authority; or
9 (b) a significant part of the authority’s assets; or
10 (c) the performance of the authority as a whole; or
11 (d) the carrying out of a significant activity of the authority.
- 12 (2) For this section, an event, part of assets or activity is *significant* for
13 a relevant territory authority if—
14 (a) it is significant when interpreted in accordance with accounting
15 standards relating to materiality ordinarily used in Australia
16 when the decision about whether it is significant is made; or
17 (b) a document published by the authority identifies it as
18 significant (however described); or
19 (c) a memorandum of understanding or other agreement between
20 the responsible Minister or Treasurer and the authority
21 identifies it as significant (however described); or
22 (d) it is prescribed under the financial management guidelines.
- 23 **102 Ministerial directions to authorities about financial etc**
24 **statements**
- 25 (1) The responsible Minister for a relevant territory authority may, in
26 writing, direct the relevant person for the authority to give the
27 Minister financial or other statements relating to the authority.

- 1 (2) Without limiting subsection (1), the direction may state the form in
2 which the statements are to be given and the period to which they
3 must relate.
- 4 (3) A relevant person for a relevant territory authority who receives a
5 direction under subsection (1) must prepare the statements required
6 by the direction and give them to the responsible Minister within
7 1 month after the day the person receives the direction or, if a longer
8 period is allowed by the Minister, within the longer period.
- 9 (4) The responsible Minister must not allow a longer period under
10 subsection (3) for complying with a direction unless satisfied that
11 there are special circumstances that justify the longer period.
- 12 (5) In this section:
- 13 *relevant person*, for a relevant territory authority, means—
- 14 (a) if the authority has a governing board—the chair of the
15 governing board; or
- 16 (b) if the authority does not have a governing board—the chief
17 executive officer.

18 **103 Application of government policies to authorities**

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

1 (b) the doing of, or the failure to do, anything by or in relation to
2 the authority to comply with applicable governmental policies.

3 (4) A notice under subsection (1) is a notifiable instrument.

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

5 **41 New part 11**

6 *insert*

7 **Part 11 Transitional**

8 **109 Financial Management Legislation Amendment Act**
9 **2005—provisions with 1 July 2005 application**

10 (1) The 1 July 2005 sections, as in force immediately after the
11 commencement of this section, apply in relation to the financial year
12 that commenced on 1 July 2005 and all subsequent financial years.

13 (2) In its application in relation to the financial year that commenced on
14 1 July 2005, section 68, as in force immediately after the
15 commencement of this section, applies as if the reference in
16 subsection (3) to section 61 (5) (d) included a reference to
17 section 55 (3) (d).

18 (3) In this section:

19 *1 July 2005 sections* means the following sections:

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

- 1 • section 28 (Responsibility for annual financial statements of
- 2 departments)
- 3 • section 29 (Audit of financial statements of departments)
- 4 • section 30A (Statements of performance of departments)
- 5 • section 30B (Responsibility for departmental statements of
- 6 performance)
- 7 • section 30C (Scrutiny of departmental statements of
- 8 performance)
- 9 • section 30D (Presentation of departmental statements of
- 10 performance)
- 11 • section 30E (Half-yearly departmental performance reports)
- 12 • section 31 (Responsibilities of chief executives of departments)
- 13 • section 63 (Annual financial statements of territory authorities)
- 14 • section 64 (Responsibility for annual financial statements of
- 15 territory authorities)
- 16 • section 65 (Audit of annual financial statements of territory
- 17 authorities)
- 18 • section 66 (Presentation of annual financial statements of
- 19 territory authorities)
- 20 • section 68 (Statements of performance of territory authorities)
- 21 • section 69 (Responsibility for territory authority statements of
- 22 performance)
- 23 • section 70 (Scrutiny of territory authority statements of
- 24 performance)
- 25 • section 71 (Presentation of territory authority statements of
- 26 performance).
- 27 (4) This section expires 1 year after the day it commences.

-
- 1 **110 Financial Management Legislation Amendment Act**
2 **2005—provisions with 1 July 2006 application**
- 3 (1) The 1 July 2006 sections, as in force immediately after the
4 commencement of this section, apply in relation to the financial year
5 commencing on 1 July 2006 and all subsequent financial years.
- 6 (2) Despite the amendments of this Act made by the *Financial*
7 *Management Legislation Amendment Act 2005*, the following
8 sections, as in force immediately before the commencement of this
9 section, continue to apply in relation to the financial year that
10 commenced on 1 July 2005:
- 11 • section 10 (Budget papers)
12 • section 58 (Statements of intent).
- 13 (3) In this section:
- 14 *1 July 2006 sections* means the following sections:
- 15 • section 10 (Budget papers)
16 • section 12A (Territory authority and territory-owned
17 corporation budgets)
18 • section 61 (Territory authority statements of intent)
19 • section 62 (Presentation of statements of intent of territory
20 authorities).
- 21 (4) This section expires on the expiry of section 109.
- 22 **111 Transitional regulations**
- 23 (1) A regulation may prescribe transitional matters necessary or
24 convenient to be prescribed because of the enactment of the
25 *Financial Management Legislation Amendment Act 2005*.
- 26 (2) A regulation may modify this part (including its operation in
27 relation to another territory law) to make provision in relation to
28 anything that, in the Executive’s opinion, is not, or not adequately or
29 appropriately, dealt with in this part.

1 (3) A regulation under subsection (2) has effect despite anything
2 elsewhere in this Act or another territory law.

3 (4) This section expires 2 years after the day it commences.

4 **42 Dictionary, note 2 new dot points**

5 *insert*

- 6 • Act
- 7 • exercise
- 8 • function
- 9 • GST
- 10 • person.

11 **43 Dictionary, new definition of *applicable governmental***
12 ***policies***

13 *insert*

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

16 **44 Dictionary, definition of *capital injection***

17 *substitute*

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

- 21 (a) the purchase of assets to be held by the department or to be
22 owned by the authority or corporation; or
- 23 (b) the development of assets held by the department or owned by
24 the authority or corporation; or
- 25 (c) augmenting the assets held by the department or owned by the
26 authority or corporation; or

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

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

5 **45 Dictionary, new definition of CEO**

6 *insert*

7 **CEO**—see *chief executive officer*.

8 **46 Dictionary, definition of chief executive officer**

9 *substitute*

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

13 **47 Dictionary, new definitions**

14 *insert*

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

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

1 **48 Dictionary, definition of *generally accepted accounting***
2 ***practice***

3 *substitute*

4 ***generally accepted accounting principles*** means accounting
5 principles and procedures that are—

6 (a) recognised by the accounting profession as appropriate for
7 reporting financial information relating to government, a
8 department or a territory authority; and

9 (b) consistent with this Act and any relevant Appropriation Act.

10 **49 Dictionary, new definitions**

11 *insert*

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

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

17 **50 Dictionary, definition of GST**

18 *omit*

19 **51 Dictionary, new definition of *material interest***

20 *insert*

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

23 **52 Dictionary, definition of *public trading enterprise***

24 *omit*

-
- 1 **53 Dictionary, new definition of *relevant territory authority***
- 2 *insert*
- 3 *relevant territory authority*, for part 9 (Governance of territory
- 4 authorities)—see section 72.
- 5 **54 Dictionary, definition of *responsible Minister*, paragraph**
- 6 **(c)**
- 7 *substitute*
- 8 (c) in relation to a territory authority—the Minister administering
- 9 the Act under which the authority is established; and
- 10 (d) in relation to a territory-owned corporation—the Minister
- 11 administering the *Territory-owned Corporations Act 1990*.
- 12 **55 Dictionary, definition of *statement of intent***
- 13 *substitute*
- 14 *statement of intent*, for a territory authority—see section 61 (1).

1 **Schedule 1 Amendments of other**
2 **legislation**

3 (see s 3)

4 **Part 1.1 ACTION Authority Act 2001**

5 **[1.1] Part 2 heading, new note**

6 *insert*

7 *Note for pt 2*

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

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

16 **[1.2] Division 2.1 heading**

17 *substitute*

18 **Division 2.1 Establishment and functions of**
19 **authority**

20 **[1.3] Section 4**

21 *substitute*

22 **4 Establishment of authority**

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

- 1 **[1.4] Section 5 (e)**
2 *omit*
- 3 **[1.5] Section 5 (f) to (h)**
4 *renumber as section 5 (e) to (g)*
- 5 **[1.6] Section 7**
6 *substitute*
- 7 **6 Restrictions on dealings with assets**
- 8 (1) In this section:
- 9 *subsidiary* means a company that, for the Corporations Act, is a
10 subsidiary of the authority.
- 11 (2) The authority or a subsidiary must not, without the Treasurer's prior
12 written approval—
- 13 (a) enter into a contract involving the payment or receipt of a total
14 amount larger than \$500 000; or
- 15 (b) sell or otherwise dispose of, or mortgage or otherwise give
16 security over, a significant asset; or
- 17 (c) mortgage or give a charge over all, or a significant part, of its
18 undertakings or assets.
- 19 (3) An approval of the Treasurer may be given subject to conditions or
20 restrictions stated in the approval.
- 21 (4) The authority or a subsidiary must not dispose of any of its main
22 undertakings unless the Legislative Assembly has, by resolution,
23 approved the disposal.
- 24 (5) A purported disposal in contravention of subsection (4) is void.

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

15 **[1.7] Division 2.2**

16 *substitute*

17 **Division 2.2 Governing board**

18 **7 Establishment of governing board**

19 The authority has a governing board.

20 **8 Governing board members**

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

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

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

1 **9 Term of chief executive officer of authority**

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

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

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

9 **[1.8] Division 2.3**

10 *omit*

11 **[1.9] Part 3 heading**

12 *substitute*

13 **Part 3 Authority staff**

14 **[1.10] Sections 19 and 20**

15 *omit*

16 **[1.11] Section 21**

17 *renumber as section 10*

18 **[1.12] Section 22 (3)**

19 *substitute*

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

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

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

3 **[1.13] Section 22 (as amended)**

4 *renumber as section 11*

5 **[1.14] Parts 4 and 5**

6 *substitute*

7 **Part 4 Miscellaneous**

8 **12 Ministerial directions**

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

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

18 **13 Dividends**

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

1 (4) In this section:

2 *profit* includes the net proceeds of the sale of assets.

3 **14 Authority's annual report**

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

6 (a) a copy of any direction given under section 12 (Ministerial
7 directions) during the year; and

8 (b) a statement by the authority about action taken during the year
9 to give effect to any direction given (whether before or during
10 the year) under that section.

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

13 **15 Regulation-making power**

14 The Executive may make regulations for this Act.

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

17 **[1.15] Dictionary**

18 *substitute*

19 **Dictionary**

20 (see s 2)

21 *Note 1* The Legislation Act contains definitions and other provisions relevant to
22 this Act.

23 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 24 • exercise
25 • function.

26 ***authority*** means ACTION Authority.

1 **[1.18] Division 2.1 heading**

2 *substitute*

3 **Division 2.1 Establishment and functions of**
4 **corporation**

5 **[1.19] Section 4**

6 *substitute*

7 **4 Establishment of corporation**

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

10 **[1.20] Section 5, new note**

11 *insert*

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

15 **[1.21] Sections 6 and 7**

16 *omit*

17 **[1.22] Division 2.2**

18 *substitute*

19 **Division 2.2 Governing board**

20 **6 Establishment of governing board**

21 The corporation has a governing board.

1 **7 Governing board members**

2 The governing board has 9 members.

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

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

7 **8 Chief executive officer of corporation**

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

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

12 **[1.23] Division 2.3**

13 *omit*

14 **[1.24] Part 3 heading**

15 *substitute*

16 **Part 3 Corporation staff and**
17 **consultants**

18 **[1.25] Division 3.1**

19 *omit*

20 **[1.26] Division 3.2 heading**

21 *omit*

1 **[1.27] Section 18**

2 *substitute*

3 **9 Staff**

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

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

14 **[1.28] Section 19 (2)**

15 *substitute*

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

18 **[1.29] Section 19 (as amended)**

19 *renumber as section 10*

20 **[1.30] Part 4**

21 *omit*

22 **[1.31] Part 5**

23 *renumber as part 4*

24 **[1.32] Section 26**

25 *omit*

26 **[1.33] Sections 27 and 28**

27 *renumber as sections 11 and 12*

1 **[1.34] Section 29 (a)**

2 *omit*

3 section 27

4 *substitute*

5 section 11

6 **[1.35] Section 29 (as amended)**

7 *renumber as section 13*

8 **[1.36] Section 30**

9 *omit*

10 **[1.37] Section 31**

11 *renumber as section 14*

12 **[1.38] Dictionary**

13 *substitute*

14 **Dictionary**

15 (see s 2)

16 *Note 1* The Legislation Act contains definitions and other provisions relevant to
17 this Act.

18 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 19 • exercise
20 • function.

21 ***corporation*** means the Australian Capital Tourism Corporation.

22 ***governing board*** means the governing board of the corporation.

1 **Part 1.3 Building and Construction**
2 **Industry Training Levy Act 1999**

3 **[1.39] Title**

4 *substitute*

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

7 **[1.40] Part 2**

8 *substitute*

9 **Part 2 The authority**

10 *Note for pt 2*

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

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

20 **Division 2.1 Establishment and functions of**
21 **authority**

22 **4 Establishment of authority**

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

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

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

3 **5 Functions of authority**

4 The authority has the following functions:

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

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

13 **Division 2.2 Governing board**

14 **6 Establishment of governing board**

15 The authority has a governing board.

16 **7 Governing board members**

17 (1) The governing board has 6 members.

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

20 (2) Two of the governing board members must be appointed to
21 represent the interests of employers in the building and construction
22 industry.

23 (3) Two of the governing board members must be appointed to
24 represent the interests of employees in the building and construction
25 industry.

26 (4) The chair must not be a representative mentioned in subsection (2)
27 or (3).

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

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

5 **7A Term of chief executive officer of authority**

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

8 **7B No deputy chair**

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

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

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

14 **8 Administration of authority**

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

17 (a) administrative or secretarial services to the authority (including
18 the governing board); or

19 (b) the administration of the fund in accordance with the directions
20 of the governing board.

21 **[1.41] Sections 17 and 19**

22 *omit*

23 board

24 *substitute*

25 authority

1 **[1.42] Section 21**

2 *substitute*

3 **21 Refund of levy if work not carried out**

4 (1) This section applies if—

5 (a) training levy has been paid for work before it starts; and

6 (b) the work does not start.

7 (2) The authority must refund to the project owner the amount paid
8 within 1 month after the day the authority receives a written request
9 for the refund from the project owner.

10 **[1.43] Sections 22 to 25 and 28 to 30**

11 *omit*

12 board

13 *substitute*

14 authority

15 **[1.44] Dictionary, definition of *board***

16 *substitute*

17 ***authority*** means the Building and Construction Industry Training
18 Fund Authority.

19 **[1.45] Dictionary, definition of *chairperson***

20 *substitute*

21 ***chair*** means the chair of the governing board.

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

1 **[1.46] Dictionary, new definition of *governing board***

2 *insert*

3 *governing board* means the governing board of the authority.

4 **[1.47] Dictionary, definition of *member***

5 *omit*

6 **Part 1.4 Canberra Institute of Technology**
7 **Act 1987**

8 **[1.48] Section 3 (1), definitions of *appoint, director, joint***
9 ***venture, securities and share***

10 *omit*

11 **[1.49] Section 3 (1), definitions (as amended)**

12 *relocate to dictionary*

13 **[1.50] Section 3, remainder**

14 *substitute*

15 **2 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

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

19 *Note 2* A definition in the dictionary (including a signpost definition) applies to
20 the entire Act unless the definition, or another provision of the Act,
21 provides otherwise or the contrary intention otherwise appears (see
22 Legislation Act, s 155 and s 156 (1)).

1 **3 Notes**

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

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

5 **[1.51] Part 2 heading**

6 *substitute*

7 **Part 2 Establishment, functions and**
8 **powers of institute**

9 *Note for pt 2*

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

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

15 **[1.52] Division 2.1 heading**

16 *omit*

17 **[1.53] Section 4**

18 *substitute*

19 **4 Establishment of institute**

20 The Canberra Institute of Technology is established.

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

- 1 **[1.54] Section 5 (1) (a)**
- 2 *substitute*
- 3 (a) to conduct, mainly in the ACT, an educational institution to
- 4 foster excellence in study in the fields of technical and further
- 5 education that the director, with the Minister's written
- 6 approval, decides or the Minister requires; and
- 7 **[1.55] Section 5 (1) (g)**
- 8 *substitute*
- 9 (g) to consult and cooperate with other entities in relation to the
- 10 provision of technical and further education; and
- 11 **[1.56] Section 5 (2) to (4)**
- 12 *substitute*
- 13 (2) A decision of the director, or a requirement of the Minister, under
- 14 subsection (1) (a) must be in writing.
- 15 **[1.57] Section 5 (5) and (6)**
- 16 *renumber as section 5 (3) and (4)*
- 17 **[1.58] New section 6**
- 18 *insert*
- 19 **6 Minister's directions**
- 20 (1) The Minister may, in writing, give a direction to the director in
- 21 relation to the exercise of the institute's functions.
- 22 (2) The institute must comply with any direction of the Minister.

1 **[1.59] Division 2.3**

2 *substitute*

3 **9 Institute's powers**

4 The institute has the following powers:

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

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

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

6 **[1.60] Part 3**

7 *substitute*

8 **Part 3 Director of institute**

9 **14 Director**

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

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

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

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

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

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

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

24 **15 Ending director's appointment**

25 The Minister may end the director's appointment—

26 (a) if the director contravenes a territory law; or

27 (b) for misbehaviour; or

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

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

20 **16 Honesty, care and diligence of director**

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

24 **17 Conflict of interest**

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

1 **18 Disclosure of interests by director**

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

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

8 (2) In this section:

9 **associate**, of the director, means—

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

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

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

- 20 (a) an associate of the director;
21 (b) a corporation if the corporation has not more than
22 100 members and the director, or an associate of the director, is
23 a member of the corporation;
24 (c) a subsidiary of a corporation mentioned in paragraph (b);
25 (d) a corporation if the director, or an associate of the director, is
26 an executive officer of the corporation;
27 (e) the trustee of a trust if the director, or an associate of the
28 director, is a beneficiary of the trust;

- 1 (f) a member of a firm or partnership if the director, or an
2 associate of the director, is a member of the firm or
3 partnership;
- 4 (g) someone else carrying on a business if the director, or an
5 associate of the director, has a direct or indirect right to
6 participate in the profits of the business.
- 7 **material interest**—the director has a **material interest** in an issue if
8 the director has—
- 9 (a) a direct or indirect financial interest in the issue; or
- 10 (b) a direct or indirect interest of any other kind if the interest
11 could conflict with the proper exercise of the director’s
12 functions in relation to the Minister’s consideration of the
13 issue.

14 **19 Powers of director**

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

1 (h) the provision and management of, and fees or other charges
2 payable for, the use of amenities and services;

3 (i) the association or affiliation with the institute of any other
4 entity.

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

8 **20 Protection of director from liability**

9 (1) The director is not civilly liable for anything done or omitted to be
10 done honestly and without recklessness—

11 (a) in the exercise of a function under a territory law; or

12 (b) in the reasonable belief that the act or omission was in the
13 exercise of a function under a territory law.

14 (2) Any liability that would, apart from this section, attach to the
15 director attaches instead to the Territory.

16 **[1.61] Section 29 (1), new note**

17 *insert*

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

21 **[1.62] Section 29 (4)**

22 *omit*

23 **[1.63] Section 31**

24 *omit*

1 **[1.64] Section 32**

2 *substitute*

3 **32 Ending council member appointments**

4 (1) The Minister may end a member's appointment—

5 (a) if the member contravenes a territory law; or

6 (b) for misbehaviour; or

7 (c) if the member becomes bankrupt or executes a personal
8 insolvency agreement; or

9 (d) if the member is convicted, or found guilty, in Australia of an
10 offence punishable by imprisonment for at least 1 year; or

11 (e) if the member is convicted, or found guilty, outside Australia
12 of an offence that, if it had been committed in the ACT, would
13 be punishable by imprisonment for at least 1 year; or

14 (f) if the member exercises the member's functions other than in
15 accordance with section 34 (Honesty, care and diligence of
16 council members); or

17 (g) if the member fails to take all reasonable steps to avoid being
18 placed in a position where a conflict of interest arises during
19 the exercise of the member's functions; or

20 (h) if the member contravenes section 37 (Disclosure of interests
21 by council members); or

22 (i) if the member is absent from 3 consecutive meetings of the
23 council, otherwise than on approved leave; or

24 (j) for physical or mental incapacity, if the incapacity substantially
25 affects the exercise of the member's functions.

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

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

18 **[1.65] Section 33**

19 *omit*

20 **[1.66] Sections 34 and 35**

21 *substitute*

22 **34 Honesty, care and diligence of council members**

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

1 **35 Conflict of interest**

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

5 **36 Agenda to require disclosure of interest item**

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

9 **37 Disclosure of interests by council members**

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

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

17 (2) The disclosure must be recorded in the council's minutes and, unless
18 the council otherwise decides, the member must not—

19 (a) be present when the council considers the issue; or

20 (b) take part in a decision of the council on the issue.

21 **Example**

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

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

28 • Derek may be present when the council considers the issue but not take part
29 in the decision

30 • Ellen may be present for the consideration and take part in the decision.

- 1 The council does not make a decision allowing Frank to be present or take part in
2 the council's decision. Accordingly, since Frank has a material interest he cannot
3 be present for the consideration of the issue or take part in the decision.
- 4 *Note* An example is part of the Act, is not exhaustive and may extend, but
5 does not limit, the meaning of the provision in which it appears (see
6 Legislation Act, s 126 and s 132).
- 7 (3) Any other council member who also has a material interest in the
8 issue must not be present when the council is considering its
9 decision under subsection (2).
- 10 (4) In this section:
- 11 *associate*, of a person, means—
- 12 (a) the person's business partner; or
13 (b) a close friend of the person; or
14 (c) a family member of the person.
- 15 *executive officer*, of a corporation, means a person, by whatever
16 name called and whether or not the person is a director of the
17 corporation, who is concerned with, or takes part in, the
18 corporation's management.
- 19 *indirect interest*—without limiting the kinds of indirect interests a
20 person may have, a person has an *indirect interest* in an issue if any
21 of the following has an interest in the issue:
- 22 (a) an associate of the person;
23 (b) a corporation if the corporation has not more than
24 100 members and the person, or an associate of the person, is a
25 member of the corporation;
26 (c) a subsidiary of a corporation mentioned in paragraph (b);
27 (d) a corporation if the person, or an associate of the person, is an
28 executive officer of the corporation;

- 1 (e) the trustee of a trust if the person, or an associate of the person,
2 is a beneficiary of the trust;
- 3 (f) a member of a firm or partnership if the person, or an associate
4 of the person, is a member of the firm or partnership;
- 5 (g) someone else carrying on a business if the person, or an
6 associate of the person, has a direct or indirect right to
7 participate in the profits of the business.
- 8 ***material interest***—a council member has a ***material interest*** in an
9 issue if the member has—
- 10 (a) a direct or indirect financial interest in the issue; or
- 11 (b) a direct or indirect interest of any other kind if the interest
12 could conflict with the proper exercise of the member's
13 functions in relation to the council's consideration of the issue.

14 **38 Reporting of disclosed interests to Minister**

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

- 1 (4) In this section:
2 *relevant committee* means—
3 (a) a standing committee of the Legislative Assembly nominated
4 by the Speaker for subsection (3); or
5 (b) if no nomination under paragraph (a) is in effect—the standing
6 committee of the Legislative Assembly responsible for public
7 accounts.
- 8 **39 Protection of council members from liability**
- 9 (1) A council member is not civilly liable for anything done or omitted
10 to be done honestly and without recklessness—
11 (a) in the exercise of a function under a territory law; or
12 (b) in the reasonable belief that the act or omission was in the
13 exercise of a function under a territory law.
- 14 (2) Any liability that would, apart from this section, attach to a council
15 member attaches instead to the institute.
- 16 **40 Time and place of council meetings**
- 17 (1) Meetings of the council are to be held when and where it decides.
18 (2) However, the council must meet—
19 (a) at least 6 times each year; and
20 (b) at least once every 3 months.
- 21 (3) The chairperson—
22 (a) may at any time call a meeting of the council; and
23 (b) must call a meeting if asked by the Minister or at least
24 2 members.
- 25 (4) The chairperson must give the other members reasonable notice of
26 the time and place of a meeting called by the chairperson.

- 1 **41 Presiding member at meetings**
- 2 (1) The chairperson presides at all meetings at which the chairperson is
3 present.
- 4 (2) If the chairperson is absent and the council has a deputy
5 chairperson, the deputy chairperson presides.
- 6 (3) If the chairperson and the deputy chairperson are absent or the
7 chairperson is absent and there is no deputy chairperson, the
8 member chosen by the members present presides.
- 9 **42 Quorum at meetings**
- 10 Business may be carried on at a meeting of the council only if at
11 least $\frac{1}{2}$ the number of members appointed are present.
- 12 **43 Voting at meetings**
- 13 (1) At a meeting of the council each member has a vote on each
14 question to be decided.
- 15 (2) A question is decided by a majority of the votes of the members
16 present and voting but, if the votes are equal, the member presiding
17 has a deciding vote.
- 18 **44 Conduct of meetings etc**
- 19 (1) The council may conduct its proceedings (including its meetings) as
20 it considers appropriate.

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

5 **Examples**

6 a phone link, a satellite link

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

- 10 (3) A council member who takes part in a meeting conducted under
11 subsection (2) is taken, for all purposes, to be present at the meeting.

- 12 (4) A resolution is a valid resolution of the council, even if it is not
13 passed at a meeting of the board, if all members agree to the
14 proposed resolution in writing or by electronic communication.

15 **Example of electronic communication**

16 email

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

18 **[1.67] Part 7 heading**

19 *substitute*

20 **Part 7 Staff and consultants**

21 **[1.68] Section 49**

22 *substitute*

23 **49 Staff of institute**

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

26 *Note* The *Public Sector Management Act 1994*, s 24 provides that the chief
27 executive officer of a territory instrumentality has all the powers of a
28 chief executive under the Act in relation to the instrumentality staff to

1 be employed under that Act (including, for example, in relation to the
2 appointment of people to, or the employment of people for, that staff).
3 Under that Act, s 3, def *chief executive officer*, the chief executive
4 officer of an instrumentality is the person who has responsibility for
5 managing its affairs.

6 **50 Consultants of institute**

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

11 **[1.69] Sections 55 and 56**

12 *omit*

13 **[1.70] Section 58 (1)**

14 *substitute*

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

17 **[1.71] Section 62**

18 *substitute*

19 **62 Delegation by director**

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

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

1 **[1.72] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 8 • calendar year
9 • corporation
10 • entity
11 • establish
12 • exercise.

13 *director* means the director of the institute.

14 **Part 1.5 Canberra Institute of Technology**
15 **Regulation 1994**

16 **[1.73] Regulation repealed**

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

1 **Part 1.6** **Cemeteries and Crematoria Act**
2 **2003**

3 **[1.74] Part 3 heading**

4 *substitute*

5 **Part 3** **The cemeteries authority**

6 *Note for pt 3*

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

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

15 **[1.75] Division 3.1 heading**

16 *substitute*

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

19 **[1.76] Sections 28 and 29**

20 *substitute*

21 **28** **Establishment of cemeteries authority**

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

24 *Note* If a law changes a name of an entity (like the Australian Capital
25 Territory Public Cemeteries Board), the entity continues in existence
26 under the new name (the Australian Capital Territory Public Cemeteries

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

3 **28A Functions of cemeteries authority**

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

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

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

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

14 **29 Establishment of governing board**

15 The cemeteries authority has a governing board.

16 **29A Governing board members**

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

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

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

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

1 **[1.77] Section 30**
2 *omit*
3 board
4 *substitute*
5 cemeteries authority

6 **[1.78] Sections 31 and 32**
7 *omit*

8 **[1.79] Division 3.2**
9 *omit*

10 **[1.80] Division 3.3**
11 *omit*

12 **[1.81] Division 3.4 heading**
13 *substitute*

14 **Division 3.2 Staff of cemeteries authority**

15 **[1.82] Section 44 (1) and (2)**
16 *omit*
17 board
18 *substitute*
19 cemeteries authority

- 1 **[1.83] Section 44 (3)**
- 2 *omit*
- 3 board's power
- 4 *substitute*
- 5 power of the cemeteries authority
- 6 **[1.84] Dictionary, definition of *board***
- 7 *omit*
- 8 **[1.85] Dictionary, new definition of *cemeteries authority***
- 9 *insert*
- 10 *cemeteries authority* means the Australian Capital Territory Public
- 11 Cemeteries Authority.
- 12 **[1.86] Dictionary, definition of *chairperson***
- 13 *omit*
- 14 **[1.87] Dictionary, definition of *deputy chairperson***
- 15 *omit*
- 16 **[1.88] Dictionary, new definition of *governing board***
- 17 *insert*
- 18 *governing board* means the governing board of the cemeteries
- 19 authority.
- 20 **[1.89] Dictionary, definition of *member***
- 21 *omit*

1 **Part 1.7** **Cultural Facilities Corporation**
2 **Act 1997**

3 **[1.90] Section 3A**

4 *renumber as section 4*

5 **[1.91] Part 2 heading**

6 *substitute*

7 **Part 2** **The corporation**

8 *Note for pt 2*

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

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

17 **[1.92] Section 4**

18 *substitute*

19 **5 Establishment of corporation**

20 The Cultural Facilities Corporation is established.

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

23 **[1.93] Section 5**

24 *renumber as section 6*

25 **[1.94] Section 6**

26 *omit*

1 **[1.95] Section 7, note**

2 *substitute*

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

5 **[1.96] Section 9**

6 *omit*

7 **[1.97] Divisions 2.2 and 2.3**

8 *substitute*

9 **Division 2.2 Governing board of corporation**

10 **9 Establishment of governing board**

11 The corporation has a governing board.

12 **10 Governing board members**

13 The governing board has 7 members.

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

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

18 **11 Chief executive officer of corporation**

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

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

1 **[1.98] Part 3 heading**

2 *substitute*

3 **Part 3 Corporation staff and**
4 **consultants**

5 **[1.99] Division 3.1**

6 *omit*

7 **[1.100] Division 3.2 heading**

8 *omit*

9 **[1.101] Sections 19 and 20**

10 *substitute*

11 **12 Staff**

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

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

22 **13 Consultants**

23 (1) The corporation may engage consultants.

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

- 1 **[1.102] Part 4**
- 2 *omit*
- 3 **[1.103] Part 5**
- 4 *renumber as part 4*
- 5 **[1.104] Section 27**
- 6 *omit*
- 7 **[1.105] Sections 28 to 31**
- 8 *renumber as sections 14 to 17*
- 9 **[1.106] Section 32**
- 10 *omit*
- 11 **[1.107] Schedule 2**
- 12 *omit*
- 13 **[1.108] Dictionary, definition of *designated location***
- 14 *omit*
- 15 3A
- 16 *substitute*
- 17 4
- 18 **[1.109] Dictionary, new definition of *governing board***
- 19 *insert*
- 20 ***governing board*** means the governing board of the corporation.
- 21 **[1.110] Dictionary, definition of *member***
- 22 *omit*

1 **Part 1.8** **Gambling and Racing Control**
2 **Act 1999**

3 **[1.111] Section 1**

4 *substitute*

5 **1 Name of Act**

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

7 **[1.112] Section 3, definitions of *casino*, *commission* and *gaming***
8 ***officer***

9 *omit*

10 **[1.113] Section 3, definitions (as amended)**

11 *relocate to dictionary*

12 **[1.114] Section 3, remainder**

13 *substitute*

14 **2 Dictionary**

15 The dictionary at the end of this Act is part of this Act.

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

18 *Note 2* A definition in the dictionary (including a signpost definition) applies to
19 the entire Act unless the definition, or another provision of the Act,
20 provides otherwise or the contrary intention otherwise appears (see
21 Legislation Act, s 155 and s 156 (1)).

22 **3 Notes**

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

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

- 1 **[1.115] Part 2, new note**
- 2 *insert*
- 3 *Note for pt 2*
- 4 The governance of territory authorities, including the commission, is
5 regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as
6 well as the Act that establishes them.
- 7 The FMA, pt 9 deals, for example, with the corporate status of territory
8 authorities and their powers, the make-up of governing boards, the
9 responsibilities of the governing board and board members, how
10 governing board positions can be ended, meetings of governing boards
11 and conflicts of interest.
- 12 **[1.116] Division 2.1 heading**
- 13 *substitute*
- 14 **Division 2.1 Establishment and functions of**
15 **commission**
- 16 **[1.117] Section 5**
- 17 *substitute*
- 18 **5 Establishment of gambling and racing commission**
- 19 The ACT Gambling and Racing Commission (the *commission*) is
20 established.
- 21 **[1.118] Section 6 (1) (c)**
- 22 *substitute*
- 23 (c) to exercise any other function given to the commission under
24 this Act or any other territory law.
- 25 *Note* A provision of a law that gives a function to an entity also gives the
26 entity the powers necessary and convenient to exercise the function (see
27 Legislation Act, s 196).

1 **[1.119] Section 9**

2 *omit*

3 **[1.120] Section 11**

4 *omit*

5 **[1.121] Division 2.2 heading**

6 *substitute*

7 **Division 2.2 Governing board**

8 **[1.122] Section 12**

9 *substitute*

10 **11 Establishment of governing board**

11 The commission has a governing board.

12 **12 Governing board members**

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

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

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

20 (2) A person is not eligible to be a member if—

21 (a) the person or the person's domestic partner has an interest in a
22 business subject to a gaming law; or

23 *Note* For the meaning of *domestic partner*, see the Legislation Act,
24 s 169.

25 (b) the person would be unlikely to be able to properly exercise the
26 functions of a member because of the person's business

- 1 association, financial association or close personal association
2 with someone else; or
- 3 (c) the person has been convicted or found guilty of an offence
4 against a gaming law or a corresponding law; or
- 5 (d) within 5 years before the proposed appointment, the person has
6 been convicted, or found guilty, of an offence in Australia
7 punishable by imprisonment for at least 1 year; or
- 8 (e) within 5 years before the proposed appointment, the person has
9 been convicted, or found guilty, of an offence outside Australia
10 that, if it had been committed in the ACT, would have been
11 punishable by imprisonment for at least 1 year.

12 (3) In this section:

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

15 **13 Chief executive officer of commission**

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

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

20 **[1.123] Section 13**

21 *omit*

- 1 **[1.124] Sections 14 and 15**
- 2 *substitute*
- 3 **14 Staff**
- 4 The commission's staff must be employed under the *Public Sector*
- 5 *Management Act 1994*.
- 6 *Note* The *Public Sector Management Act 1994*, s 24 provides that the chief
- 7 executive officer of a territory instrumentality has all the powers of a
- 8 chief executive under the Act in relation to the instrumentality staff to
- 9 be employed under that Act (including, for example, in relation to the
- 10 appointment of people to, or the employment of people for, that staff).
- 11 Under that Act, s 3, def *chief executive officer*, the chief executive
- 12 officer of an instrumentality is the person who has responsibility for
- 13 managing its affairs.
- 14 **15 Consultants and contractors**
- 15 (1) The commission may engage consultants and contractors.
- 16 (2) However, the commission must not enter into a contract of
- 17 employment under this section.
- 18 **[1.125] Section 20**
- 19 *substitute*
- 20 **20 Authorised officers**
- 21 (1) The members of the governing board are authorised officers.
- 22 (2) The chief executive officer may appoint a person to be an authorised
- 23 officer.
- 24 *Note 1* For the making of appointments (including acting appointments), see
- 25 the Legislation Act, pt 19.3.
- 26 *Note 2* In particular, a person may be appointed for a particular provision of a
- 27 law (see Legislation Act, s 7 (3)) and an appointment may be made by
- 28 naming a person or nominating the occupant of a position (see s 207).

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

9 **[1.126] Section 24 (1)**

- 10 *omit*
- 11 chief executive
- 12 *substitute*
- 13 chief executive officer

14 **[1.127] New section 53CA**

15 *insert*

16 **53CA Protection for authorised officers**

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

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

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

1 (c) in the reasonable belief that the act or omission was for a
2 purpose mentioned in paragraph (a) or (b).

3 (3) Any liability that would, apart from this section, attach to the
4 authorised officer attaches instead to the commission.

5 **[1.128] Schedules 1 and 2**

6 *omit*

7 **[1.129] New dictionary**

8 *insert*

9 **Dictionary**

10 (see s 2)

11 *Note 1* The Legislation Act contains definitions and other provisions relevant to
12 this Act.

13 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 14 • ACT
15 • exercise
16 • function
17 • under.

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

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

21 ***chief executive officer*** means the chief executive officer of the
22 commission.

23 ***commission*** means the Gambling and Racing Commission.

24 ***gaming officer*** means—

25 (a) a member of the governing board; or

26 (b) any other authorised officer; or

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

4 ***governing board*** means the governing board of the commission.

5 **Part 1.9 Health Promotion Act 1995**

6 **[1.130] Title**

7 *substitute*

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

10 **[1.131] Section 3**

11 *substitute*

12 **2 Dictionary**

13 The dictionary at the end of this Act is part of this Act.

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

16 *Note 2* A definition in the dictionary applies to the entire Act unless the
17 definition, or another provision of the Act, provides otherwise or the
18 contrary intention otherwise appears (see Legislation Act, s 155 and
19 s 156 (1)).

20 **3 Notes**

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

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

1 **[1.132] Part 2**

2 *substitute*

3 **Part 2 The health promotion authority**

4 *Note for pt 2*

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

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

13 **Division 2.1 Establishment and functions of health**
14 **promotion authority**

15 **4 Establishment of health promotion authority**

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

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

22 **5 Functions of health promotion authority**

23 (1) The health promotion authority has the following functions:

24 (a) funding activities related to the promotion of good health,
25 safety and the prevention or early detection of disease;

26 (b) promoting good health in the community through the
27 sponsorship of sports, recreation and arts activities, and
28 cultural activities generally;

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

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

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

20 **6 Delegation by health promotion authority**

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

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

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

-
- 1 **7** **Ministerial directions**
- 2 (1) The Minister may give the health promotion authority written
- 3 directions in relation to the exercise of its functions.
- 4 (2) Before giving a direction the Minister must—
- 5 (a) tell the governing board about the effect of the proposed
- 6 direction; and
- 7 (b) give the board a reasonable opportunity to comment on the
- 8 proposed direction; and
- 9 (c) consider any comments made by the board.
- 10 (3) The Minister must present a copy of a direction to the Legislative
- 11 Assembly within 6 sitting days after the day the Minister makes it.
- 12 (4) On receiving a direction under this section, the health promotion
- 13 authority must comply with it.

14 **Division 2.2** **Governing board**

15 **8** **Establishment of governing board**

16 The health promotion authority has a governing board.

17 **9** **Governing board members**

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

1 (e) a member with expertise in environmental health;

2 (f) a member with expertise in sport or recreation;

3 (g) a member with expertise in the arts or culture generally.

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

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

9 **10 Exercise of functions of governing board**

10 (1) In exercising its functions, the governing board may do the
11 following:

12 (a) appoint funding committees, chaired by members of the
13 governing board, to give advice to the governing board about
14 applications for funding;

15 (b) appoint other committees and working groups to assist the
16 governing board.

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

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

21 **Division 2.3 Staff, consultants and committees of**
22 **health promotion authority**

23 **11 Staff**

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

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

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

5 **12 Consultants**

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

9 **13 Committees and working groups**

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

12 **14 Application of governance provisions to committee**
13 **members**

- 14 (1) The governance provisions apply to a committee member as if—
15 (a) a reference to a governing board member were a reference to a
16 committee member; and
17 (b) a reference to the governing board were a reference to the
18 committee; and
19 (c) a reference to a governing board meeting were a reference to a
20 committee meeting; and
21 (d) any other necessary changes, and any changes prescribed by
22 regulation, were made.

- 23 (2) In this section:

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

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

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

8 **15 Application of FMA protection provision to committee**
9 **members etc**

10 (1) The *Financial Management Act 1996*, section 90 (Protection of
11 governing board members from liability) applies to a relevant
12 person as if—

- 13 (a) a reference to a governing board member were a reference to a
14 relevant person; and
15 (b) any other necessary changes were made.

16 (2) In this section:

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

19 ***relevant person*** means—

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

1 **[1.133] Sections 23 and 24**

2 *omit*

3 board

4 *substitute*

5 health promotion authority

6 **[1.134] Section 25**

7 *substitute*

8 **25 Expenditure**

9 (1) The income of the health promotion authority must be applied in the
10 exercise of the authority's functions.

11 (2) Without limiting subsection (1), the income of the health promotion
12 authority must be applied towards payment of the following
13 administrative costs:

14 (a) the remuneration and allowances of governing board members,
15 together with any associated administrative costs;

16 (b) payments to the Territory of amounts equal to the salary and
17 wages of the staff of the authority, together with any associated
18 administrative costs;

19 (c) payments to consultants engaged by the authority;

20 (d) all other administrative overheads incurred in the exercise of
21 the authority's functions.

22 **[1.135] Sections 26 and 27**

23 *omit*

1 **[1.136] Sections 29 and 30**

2 *substitute*

3 **29 Authority's annual report**

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

7 (a) a copy of any direction given under section 7 (Ministerial
8 directions) during the year;

9 (b) a statement by the authority about action taken during the year
10 to give effect to any direction given (whether before or during
11 the year) under that section;

12 (c) a copy of any determination made by the Minister under
13 section 24 (Transfers to health promotion authority) during the
14 year.

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

17 **[1.137] New dictionary**

18 *insert*

19 **Dictionary**

20 (see s 2)

21 *Note 1* The Legislation Act contains definitions and other provisions relevant to
22 this Act.

23 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 24 • ACT
25 • chief health officer
26 • entity
27 • exercise
28 • function

1 • under.

2 ***governing board*** means the governing board of the health
3 promotion authority.

4 ***health promotion authority*** means the ACT Health Promotion
5 Authority.

6 **Part 1.10** **Independent Competition and** 7 **Regulatory Commission Act 1997**

8 **[1.138] Section 3 (1), definitions of *commission*, *commissioner*,** 9 ***eligible person* and *function***

10 *omit*

11 **[1.139] Section 3 (1), definitions (as amended)**

12 *relocate to dictionary*

13 **[1.140] Section 3, remainder**

14 *substitute*

15 **2 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

17 *Note 1* The dictionary at the end of this Act defines certain terms used in this
18 Act, and includes references (***signpost definitions***) to other terms
19 defined elsewhere.

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

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to
25 the entire Act unless the definition, or another provision of the Act,
26 provides otherwise or the contrary intention otherwise appears (see
27 Legislation Act, s 155 and s 156 (1)).

1 **2A Notes**

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

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

5 **2B Joint ownership, control or operation**

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

9 **3 Joint provision of services**

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

12 **[1.141] Section 6 (1)**

13 *omit*

14 *commissioners*

15 *substitute*

16 commissioners

17 **[1.142] New sections 10A and 10B**

18 *insert*

19 **10A Chief executive officer**

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

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

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

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

4 **10B Chief executive officer's functions**

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

16 **Example for par (b) (iii)**

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

18 *Note* An example is part of the Act, is not exhaustive and may extend,
19 but does not limit, the meaning of the provision in which it
20 appears (see Legislation Act, s 126 and s 132).

- 21 (2) In this section:

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

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

1 **[1.143] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 8 • Act
- 9 • function
- 10 • subordinate law (see s 8).

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

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

15 *chief executive officer* means the Chief Executive Officer of the
16 commission.

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

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

21 *commission secretariat* means—

22 (a) the chief executive officer; and

23 (b) the other staff of the commission.

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

26 *senior commissioner* means the commissioner nominated as senior
27 commission under schedule 1, section 1.1.

1 *standing commissioner* means the senior commissioner or an
2 assistant commissioner.

3 **Part 1.11 Insurance Authority Act 2005**

4 **[1.144] Part 2 heading**

5 *substitute*

6 **Part 2 The insurance authority**

7 *Note for pt 2*

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

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

16 **[1.145] Section 7 (1)**

17 *substitute*

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

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

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

23 **[1.146] Section 7 (2) and (3)**

24 *omit*

25 **[1.147] Section 7 (4)**

26 *renumber as section 7 (2)*

1 **[1.148] Section 9**

2 *omit*

3 **Part 1.12 Legal Aid Act 1977**

4 **[1.149] New section 94A**

5 *insert*

6 **94A Application of Financial Management Act to commission**

7 (1) The *Financial Management Act 1996*, section 55 (2)
8 (Responsibilities of chief executive officers of territory authorities)
9 applies to the commission subject to this Act.

10 (2) The *Financial Management Act 1996*, part 9 (Governance of
11 territory authorities) does not apply to the commission.

12 **Part 1.13 Long Service Leave (Building
13 and Construction Industry) Act
14 1981**

15 **[1.150] Section 1**

16 *substitute*

17 **1 Name of Act**

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

20 **[1.151] Section 3 (1), definitions of *board, chairperson, deputy
21 registrar, member and registrar***

22 *omit*

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

2 *relocate to dictionary*

3 **[1.153] Section 3, remainder**

4 *substitute*

5 **2 Dictionary**

6 The dictionary at the end of this Act is part of this Act.

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

9 *Note 2* A definition in the dictionary applies to the entire Act unless the
10 definition, or another provision of the Act, provides otherwise or the
11 contrary intention otherwise appears (see Legislation Act, s 155 and
12 s 156 (1)).

13 **3 Notes**

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

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

17 **4 Offences against Act—application of Criminal Code etc**

18 Other legislation applies in relation to offences against this Act.

19 *Note 1* *Criminal Code*

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

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

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

1 *Note 2* *Penalty units*
2 The Legislation Act, s 133 deals with the meaning of offence penalties
3 that are expressed in penalty units.

4 **5** **Work taken to be performed in building and construction**
5 **industry**

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

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

10 **6** **Certain work outside ACT taken to be building and**
11 **construction work**

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

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

21 **7** **Person not taken not to be employee only because of**
22 **commission**

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

1 **[1.154] Part 2**

2 *substitute*

3 **Part 2 Administration**

4 **Division 2.1 The authority, governing board and**
5 **staff**

6 *Note for div 2.1*

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

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

16 **8 Establishment of authority**

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

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

24 **9 Authority not territory instrumentality etc**

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

- 1 **10** **Functions of authority**
- 2 (1) The authority has the following functions:
- 3 (a) administering the scheme of long service benefits established
- 4 under this Act;
- 5 (b) making payments under this Act;
- 6 (c) keeping the employers register and the employees and
- 7 contractors register in accordance with this Act;
- 8 (d) exercising any other function given to the authority under this
- 9 Act or any other territory law.
- 10 *Note* A provision of a law that gives a function to an entity also gives the
- 11 entity the powers necessary and convenient to exercise the function (see
- 12 Legislation Act, s 196).
- 13 (2) In exercising its functions, the authority may do any of the
- 14 following:
- 15 (a) take any necessary action to recover amounts payable to the
- 16 authority and debts incurred against the authority;
- 17 (b) enter into agreements to borrow amounts in accordance with
- 18 this Act;
- 19 (c) incur legal and other costs in proceedings by or against the
- 20 authority;
- 21 (d) refund any amounts refundable under this Act;
- 22 (e) give effect to a reciprocal agreement or reciprocal
- 23 arrangement.
- 24 (3) Subsection (2) does not limit how the authority may exercise its
- 25 functions.

1 **11 Delegation by authority**

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

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

6 **12 Establishment of governing board**

7 The authority has a governing board.

8 **13 Governing board members**

9 (1) The governing board has 4 members.

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

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

14 (2) One member of the governing board must be appointed to represent
15 employer organisations.

16 (3) One member of the governing board must be appointed to represent
17 employee organisations.

18 (4) The chair of the governing board must not be the member
19 mentioned in subsection (2) or (3).

20 (5) A member of the governing board must not be appointed for a term
21 of longer than 5 years.

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

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

- 1 (7) The registrar is a non-voting member of the governing board.
2 *Note* The *Financial Management Act 1996*, s 95 (2) and s 96 (1) deal with
3 non-voting members of governing boards.

4 **14 No deputy chair**

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

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

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

10 **15 Deputy registrar**

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

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

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

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

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

21 **16 Functions of governing board**

22 The governing board has the following functions:

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

1 (b) making recommendations to the Minister about the laws of a
2 State that the board considers suitable to be declared
3 corresponding laws under section 62;

4 (c) exercising any other function given to the board under this Act
5 or any other territory law.

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

8 **17 Arrangements for staff**

9 (1) The authority may arrange with the chief executive to use public
10 servants in the administrative unit under the chief executive's
11 control.

12 (2) The *Public Sector Management Act 1994* applies to the management
13 by the authority of public servants who are the subject of an
14 arrangement under subsection (1).

15 **Division 2.2 Inspectors and their powers**

16 **18 Inspectors**

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

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

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

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

26 **19 Identity cards**

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

- 1 (2) The identity card must show—
2 (a) a recent photograph of the person; and
3 (b) the card’s date of issue and expiry; and
4 (c) anything else prescribed by regulation.
5 (3) A person commits an offence if—
6 (a) the person stops being an inspector; and
7 (b) the person does not return the person’s identity card to the
8 registrar as soon as practicable, but no later than 7 days after
9 the day the person stops being an inspector.
10 Maximum penalty: 1 penalty unit.
11 (4) An offence against this section is a strict liability offence.
12 (5) Subsection (2) applies only in relation to a card given by the
13 registrar after the commencement of this section.
14 (6) Subsection (5) is declared to be a law to which the Legislation Act,
15 section 88 (Repeal does not end effect of transitional laws etc)
16 applies.
17 (7) Subsections (5) and (6) and this subsection expire on the day this
18 section commences.

19 **20 Powers in relation to premises**

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

- 1 (4) An inspector may, without the consent of the occupier of premises,
2 enter land around the premises to ask for consent to enter the
3 premises.
- 4 (5) To remove any doubt, an inspector may enter premises under
5 subsection (2) without payment of an entry fee or other charge.
- 6 (6) In this section:
- 7 *at any reasonable time* means at any time during normal business
8 hours or any other time when the premises are being used as a
9 workplace.
- 10 *occupier*, of premises, includes—
- 11 (a) a person believed, on reasonable grounds, to be an occupier of
12 the premises; and
- 13 (b) a person apparently in charge of the premises.

14 **21 Production of identity card by inspectors**

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

18 **22 Consent to entry by inspectors**

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

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

19 **23 General powers of inspectors for premises**

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

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

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

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

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

11 **24 Contravention of requirement by inspector**

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

14 Maximum penalty: 50 penalty units.

15 **25 Duty to give information or documents**

16 (1) An inspector may, by written notice given to a person, require the
17 person to give to the inspector the stated information or document
18 that the inspector reasonably needs for this Act.

19 (2) The information or document must be given to the inspector within
20 the period stated in the notice or, if an inspector allows a longer
21 period, the longer period.

22 (3) The period stated in the notice must be not less than 14 days after
23 the day the notice is given to the person.

24 (4) A person commits an offence if—

25 (a) the person is required to give information or a document to an
26 inspector under subsection (1); and

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

4 Maximum penalty: 50 penalty units.

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

7 **Division 2.3 Finances**

8 **25A Money of authority**

9 The money of the authority consists of—

10 (a) amounts received by the authority under section 37 and
11 section 38; and

12 (b) income derived from the investment of money of the authority;
13 and

14 (c) amounts borrowed by the authority; and

15 (d) amounts paid to the authority under a reciprocal agreement or
16 reciprocal arrangement; and

17 (e) any other amount paid to the authority under this Act.

18 **25B Application of authority money**

19 The money of the authority must be applied only—

20 (a) in payment or discharge of the costs, expenses or other
21 obligations of the authority under this Act; and

22 (b) in payment of remuneration and allowances payable to anyone
23 appointed or employed under this Act.

- 1 **25C Three-yearly investigation by actuary**
- 2 (1) The Treasurer must appoint an actuary for this Act.
- 3 *Note 1* For the making of appointments (including acting appointments), see
4 the Legislation Act, pt 19.3.
- 5 *Note 2* For example, an appointment may be made by naming a person or
6 nominating the occupant of a position (see s 207).
- 7 *Note 3* Certain Ministerial appointments require consultation with an Assembly
8 committee and are disallowable (see Legislation Act, div 19.3.3).
- 9 (2) The actuary must conduct an investigation of the state and adequacy
10 of the money of the authority—
- 11 (a) when asked by the governing board; and
- 12 (b) in any event, at least once every 3 years.
- 13 (3) The actuary must report the results of the investigation to the
14 governing board and state whether, in the actuary's opinion, any
15 reduction or increase is necessary in the rates of periodic payments
16 payable to the authority by employers and registered contractors
17 under this Act.
- 18 (4) The actuary must give the Minister a copy of each report made
19 under this section.

20 **[1.155] Section 40**

21 *omit*

22 The board shall cause to be entered and maintained

23 *substitute*

24 The registrar must enter

1 **[1.156] Section 45 (1)**

2 *omit*

3 board shall

4 *substitute*

5 registrar must

6 **[1.157] Section 45 (3)**

7 *omit everything before paragraph (a), substitute*

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

14 **[1.158] Section 45 (6)**

15 *omit*

16 board shall

17 *substitute*

18 registrar must

19 **[1.159] Section 55 (3)**

20 *substitute*

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

1 **[1.160] Section 56 (6)**

2 *substitute*

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

7 **[1.161] Section 56A (3)**

8 *substitute*

- 9 (3) If the authority receives an application in relation to a period of
10 service in a reciprocating State or Territory, the authority must—
- 11 (a) send particulars of the application, including details of the
12 period of service credited to the applicant in the employees and
13 contractors register, to the reciprocal authority of the State or
14 Territory; and
- 15 (b) send the reciprocal authority any other relevant information,
16 and copies of any relevant documents, in the authority's
17 possession, including, for an applicant who has ceased to work
18 in the building and construction industry because of total
19 incapacity—
- 20 (i) the copy of the doctor's certificate mentioned in
21 subsection (2) (c); and
- 22 (ii) if the applicant submitted to a medical examination
23 required by the governing board under section 56 (3)—a
24 copy of the examiner's report; and
- 25 (iii) if the applicant was required to submit to a medical
26 examination under section 56 (3) but refused to submit to
27 the examination—advice of that refusal; and
- 28 (iv) advice about whether or not the governing board is
29 satisfied that the applicant is entitled to payment under

1 this Act in relation to the period of service credited to the
2 applicant in the employees and contractors register.

3 **[1.162] Section 56B heading**

4 *substitute*

5 **56B Payments by reciprocal authority on authority's behalf**

6 **[1.163] Section 56B (1)**

7 *substitute*

8 (1) This section applies if the authority receives from a reciprocal
9 authority particulars of an application made to the reciprocal
10 authority by a registered employee or registered contractor for
11 payment in relation to long service leave, or payment instead of long
12 service leave, in relation to a period of service credited to the
13 applicant in the employees and contractors register.

14 (2) The authority may authorise the reciprocal authority to pay the
15 applicant, on behalf of the authority, the amount worked out by the
16 authority under section 57 as the amount to which the applicant is
17 entitled if the governing board is satisfied that the applicant is
18 entitled to the payment.

19 **[1.164] Section 56B (3)**

20 *omit*

21 (2) (b) (ii)

22 *substitute*

23 (3) (b) (ii)

1 **[1.165] Section 56B (4)**

2 *omit*

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

4 *substitute*

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

6 **[1.166] Section 56B (2) to (5) (as amended)**

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

8 **[1.167] Section 57A (b)**

9 *omit*

10 56B (5)

11 *substitute*

12 56B (6)

13 **[1.168] Section 59 (1) (a) and (d)**

14 *omit*

15 **[1.169] Section 59 (1) (g)**

16 *substitute*

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

20 **[1.170] Section 59 (1) (k)**

21 *substitute*

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

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

4 **[1.171] Section 59 (1) (m) and (n)**

5 *substitute*

6 (m) that it is not satisfied under section 56B (2) that an applicant is
7 entitled to a payment; or

8 (n) that it is not satisfied under section 63 (5) that an amount paid
9 by an employer was properly paid.

10 **[1.172] Section 59 (1) (b) and (c)**

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

12 **[1.173] Section 59 (1) (ka) to (n) (as amended)**

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

14 **[1.174] Section 59 (2)**

15 *substitute*

16 (2) Application may be made to the administrative appeals tribunal for
17 review of a decision by the registrar—

18 (a) refusing to register an employer under section 28 (1); or

19 (b) allowing, or refusing to allow, a further period as mentioned in
20 section 37 (1); or

21 (c) refusing to remit, under section 37 (7), part or all of an amount
22 payable by an employer under section 37 (6); or

23 (d) refusing to allow a further period under section 37 (6) (b); or

24 (e) allowing, or refusing to allow, a further period as mentioned in
25 section 38 (1); or

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

3 **[1.175] Section 59A**

4 *substitute*

5 **59A Notification of decisions**

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

12 **[1.176] New section 67**

13 *insert*

14 **67 Transitional—def *building and construction***

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

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

1 **[1.177] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 8 • ACT
- 9 • chief executive (see s 163)
- 10 • exercise
- 11 • function
- 12 • public servant
- 13 • under.

14 *authority* means the Construction Industry Long Service Leave
15 Authority.

16 *governing board* means the governing board of the authority.

17 *registrar* means the chief executive officer of the authority.

18 **[1.178] Further amendments, mentions of board**

19 *omit*

20 board

21 *substitute*

22 authority

23 *in*

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

- 1 • section 38 (1) and (2)
- 2 • section 41 (1) (1st mention)
- 3 • section 41 (5) (2nd and 3rd mentions)
- 4 • section 41 (6) (2nd and 3rd mentions)
- 5 • section 42 (6) (c)
- 6 • section 42 (7) and (8) (b)
- 7 • section 45 (3) (a) and (b)
- 8 • section 45 (8)
- 9 • section 46 (1) (c)
- 10 • section 47 (d)
- 11 • section 48 (1)
- 12 • section 48 (2) (1st mention)
- 13 • section 53 (1) (c)
- 14 • section 55 (1) and (2) (b)
- 15 • section 55 (4)
- 16 • section 56 (1) and (2) (b)
- 17 • section 56 (4)
- 18 • section 56A (1)
- 19 • section 56A (4)
- 20 • section 56A (5)
- 21 • section 56B (2) (a)
- 22 • section 56B (2) (b) (i)
- 23 • section 56B (3)
- 24 • section 56B (5)
- 25 • section 57 (1)
- 26 • section 57 (3)
- 27 • section 57 (5), definition of *assessment date*
- 28 • section 57 (5), definition of *determined rate* (mentions other
- 29 than 1st mention)
- 30 • section 57 (5), definition of *total equity*
- 31 • section 57A

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

[1.179] Further amendments, mentions of board

- 6 *before*
- 7 board
- 8 *insert*
- 9 governing
- 10 *in*
- 11 • section 28 (2) (c)
- 12 • section 36 (2) (e)
- 13 • section 36 (4) (1st mention)
- 14 • section 36 (5) (1st mention)
- 15 • section 36 (7)
- 16 • section 37 (4) and (5)
- 17 • section 37 (10)
- 18 • section 37A (1)
- 19 • section 38 (4)
- 20 • section 40 (g)
- 21 • section 41 heading
- 22 • section 41 (1) (2nd mention)
- 23 • section 41 (2) (1st mention)
- 24 • section 41 (3) (1st mention)
- 25 • section 41 (5) (1st mention)
- 26 • section 41 (6) (1st mention)
- 27 • section 45 (6) (b)
- 28 • section 48 (2) (2nd mention)
- 29 • section 52 (1) (a)

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

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

13 **[1.180] Part 2**

14 *substitute*

15 **Part 2 Administration**

16 **Division 2.1 The authority, governing board and**
17 **staff**

18 *Note for div 2.1*

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

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

1 **5 Establishment of authority**

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

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

8 **6 Authority not territory instrumentality etc**

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

11 **7 Functions of authority**

12 The authority has the following functions:

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

19 **8 Delegation by authority**

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

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

24 **9 Establishment of governing board**

25 The authority has a governing board.

-
- 1 **10 Governing board members**
- 2 (1) The governing board has 4 members.
- 3 *Note 1* The chair of the governing board must be appointed under the *Financial*
- 4 *Management Act 1996*, s 79.
- 5 *Note 2* The registrar is a member of the governing board (see dict, def *registrar*
- 6 and *Financial Management Act 1996*, s 80 (4)).
- 7 (2) One member of the governing board must be appointed to represent
- 8 employer organisations.
- 9 (3) One member of the governing board must be appointed to represent
- 10 employee organisations.
- 11 (4) The chair of the governing board must not be the member
- 12 mentioned in subsection (2) or (3).
- 13 (5) A member of the governing board must not be appointed for a term
- 14 of longer than 5 years.
- 15 *Note* A person may be reappointed to a position if the person is eligible to be
- 16 appointed to the position (see Legislation Act, s 208 and dict, pt 1,
- 17 def *appoint*).
- 18 (6) The Minister may, under the Legislation Act, section 209, appoint a
- 19 person to act as a member.
- 20 (7) The registrar is a non-voting member of the governing board.
- 21 *Note* The *Financial Management Act 1996*, s 95 (2) and s 96 (1) deal with
- 22 non-voting members of governing boards.
- 23 **11 No deputy chair**
- 24 The Minister must not appoint a deputy chair for the governing
- 25 board.
- 26 *Note 1* This section ensures that a deputy chair cannot be appointed for the
- 27 governing board under the *Financial Management Act 1996*, s 79 (1).
- 28 *Note 2* The Minister may appoint an acting chair (see Legislation Act, s 209).

1 **12 Deputy registrar**

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

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

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

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

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

12 **13 Functions of governing board**

13 The governing board has the following functions:

14 (a) making recommendations to the Minister under section 39B (1)
15 (Determination of levy);

16 (b) exercising any other function given to the board under this Act
17 or any other territory law.

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

20 **14 Arrangements for staff**

21 (1) The authority may arrange with the chief executive to use public
22 servants in the administrative unit under the chief executive's
23 control.

24 (2) The *Public Sector Management Act 1994* applies to the management
25 by the authority of public servants who are the subject of an
26 arrangement under subsection (1).

1 **Division 2.2 Inspectors and their powers**

2 **15 Inspectors**

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

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

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

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

12 **16 Identity cards**

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

15 (2) The identity card must show—

16 (a) a recent photograph of the person; and

17 (b) the card's date of issue and expiry; and

18 (c) anything else prescribed by regulation.

19 (3) A person commits an offence if—

20 (a) the person stops being an inspector; and

21 (b) the person does not return the person's identity card to the
22 registrar as soon as practicable, but no later than 7 days after
23 the day the person stops being an inspector.

24 Maximum penalty: 1 penalty unit.

25 (4) An offence against this section is a strict liability offence.

26 (5) Subsection (2) applies only in relation to a card given by the
27 registrar after the commencement of this section.

- 1 (6) Subsection (5) is declared to be a law to which the Legislation Act,
2 section 88 (Repeal does not end effect of transitional laws etc)
3 applies.
- 4 (7) Subsections (5) and (6) and this subsection expire on the day this
5 section commences.
- 6 **17 Powers in relation to premises**
- 7 (1) This section applies if an inspector believes, on reasonable grounds,
8 that premises are the premises of an employer.
- 9 (2) The inspector may—
- 10 (a) at any reasonable time, enter the premises; or
- 11 (b) at any time, enter the premises with the occupier's consent.
- 12 (3) However, subsection (2) (a) does not authorise entry into a part of
13 premises that is being used only for residential purposes.
- 14 (4) An inspector may, without the consent of the occupier of premises,
15 enter land around the premises to ask for consent to enter the
16 premises.
- 17 (5) To remove any doubt, an inspector may enter premises under
18 subsection (2) without payment of an entry fee or other charge.
- 19 (6) In this section:
- 20 *at any reasonable time* means at any time during normal business
21 hours or any other time when the premises are being used as a
22 workplace.
- 23 *occupier*, of premises, includes—
- 24 (a) a person believed, on reasonable grounds, to be an occupier of
25 the premises; and
- 26 (b) a person apparently in charge of the premises.

-
- 1 **18** **Production of identity card by inspectors**
- 2 An inspector must not remain at premises entered under this
- 3 division if the inspector does not produce his or her identity card for
- 4 inspection when asked by the occupier.
- 5 **19** **Consent to entry by inspectors**
- 6 (1) When seeking the consent of an occupier to enter premises under
- 7 section 17 (2) (b) (Powers in relation to premises), an inspector
- 8 must—
- 9 (a) produce his or her identity card; and
- 10 (b) tell the occupier—
- 11 (i) the purpose of the entry; and
- 12 (ii) that anything found because of the entry may be used in
- 13 evidence in court; and
- 14 (iii) that consent may be refused.
- 15 (2) If the occupier consents, the inspector must ask the occupier to sign
- 16 a written acknowledgment (an *acknowledgment of consent*)—
- 17 (a) that the occupier was told—
- 18 (i) the purpose of the entry; and
- 19 (ii) that anything found because of the entry may be used in
- 20 evidence in court; and
- 21 (iii) that consent may be refused; and
- 22 (b) that the occupier consented to the entry; and
- 23 (c) stating the time and date when consent was given.
- 24 (3) If the occupier signs an acknowledgment of consent, the inspector
- 25 must immediately give a copy to the occupier.

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

8 **20 General powers of inspectors for premises**

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

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

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

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

1 **21** **Contravention of requirement by inspector**

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

4 Maximum penalty: 50 penalty units.

5 **22** **Duty to give information or documents**

6 (1) An inspector may, by written notice given to a person, require the
7 person to give to the inspector the stated information or document
8 that the inspector reasonably needs for this Act.

9 (2) The information or document must be given to the inspector within
10 the period stated in the notice or, if an inspector allows a longer
11 period, the longer period.

12 (3) The period stated in the notice must be not less than 14 days after
13 the day the notice is given to the person.

14 (4) A person commits an offence if—

15 (a) the person is required to give information or a document to an
16 inspector under subsection (1); and

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

20 Maximum penalty: 50 penalty units.

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

23 **Division 2.3** **Finances**

24 **23** **Money of authority**

25 The money of the authority consists of—

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

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

5 **24 Application of authority money**

6 The money of the authority must be applied only—

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

11 **25 Three-yearly investigation by actuary**

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

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

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

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

- 19 (2) The actuary must conduct an investigation of the state and adequacy
20 of the money of the authority—

- 21 (a) when asked by the governing board; and
22 (b) in any event, at least once every 3 years.

- 23 (3) The actuary must report the results of the investigation to the
24 governing board and state whether, in the actuary's opinion, any
25 reduction or increase is necessary in the rates of periodic payments
26 payable to the authority by employers under this Act.

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

3 **[1.181] Section 44 heading**

4 *substitute*

5 **44 Decisions about ordinary wages by governing board**

6 **[1.182] Section 60 (1) (i)**

7 *substitute*

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

15 **[1.183] Section 61**

16 *substitute*

17 **61 Notification of decisions**

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

- 1 **[1.184] Dictionary, new notes**
- 2 *insert*
- 3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.
- 5 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:
- 6 • ACT
- 7 • chief executive (see s 163)
- 8 • exercise
- 9 • function
- 10 • public servant
- 11 • under.
- 12 **[1.185] Dictionary, new definition of *authority***
- 13 *insert*
- 14 *authority* means the Cleaning Industry Long Service Leave
15 Authority.
- 16 **[1.186] Dictionary, definitions of *board* and *chairperson***
- 17 *substitute*
- 18 *chair* means the chair of the governing board.
- 19 *Note* The chair must be appointed under the *Financial Management*
20 *Act 1996*, s 79.
- 21 **[1.187] Dictionary, definition of *deputy registrar***
- 22 *omit*
- 23 **[1.188] Dictionary, definition of *governing board***
- 24 *insert*
- 25 *governing board* means the governing board of the authority.
- 26 **[1.189] Dictionary, definitions of *member* and *quarter***
- 27 *omit*
-

- 1 **[1.190] Dictionary, definition of *registrar***
- 2 *substitute*
- 3 *registrar* means the chief executive officer of the authority.
- 4 **[1.191] Further amendments, mentions of *board***
- 5 *omit*
- 6 board
- 7 *substitute*
- 8 authority
- 9 *in*
- 10 • section 3D (3)
 - 11 • section 4 (b)
 - 12 • section 29
 - 13 • section 31 (1) (b)
 - 14 • section 33 (3) (b)
 - 15 • section 36
 - 16 • section 39 (1)
 - 17 • section 39A (1)
 - 18 • section 40 (1)
 - 19 • section 40 (2)
 - 20 • section 40 (4) and (5)
 - 21 • section 41 (1) and (2) (b)
 - 22 • section 44 (1) (2nd mention)
 - 23 • section 44 (7) (1st mention)
 - 24 • section 44 (8) (1st mention)
 - 25 • section 46 (1)
 - 26 • section 55 (1) and (2) (b)
 - 27 • section 55 (3) (2nd and 3rd mentions)
 - 28 • section 55 (4)

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

[1.192] Further amendments, mentions of board

14 *before*

15 board

16 *insert*

17 governing

18 *in*

- 19 • section 33 (2)
- 20 • section 33 (3) (1st mention)
- 21 • section 33 (4)
- 22 • section 34 (1) (e)
- 23 • section 37A (4)
- 24 • section 37A (5) (1st mention)
- 25 • section 38 (1) (e)
- 26 • section 38A (2), (3) and (4)
- 27 • section 39B (1)
- 28 • section 43 (f)
- 29 • section 44 (1) (1st mention)

- 1 • section 44 (2)
- 2 • section 44 (3) (a) (1st mention)
- 3 • section 44 (4)
- 4 • section 44 (5) and (6)
- 5 • section 44 (7) (2nd mention)
- 6 • section 44 (8) (2nd mention)
- 7 • section 49 (1) and (2)
- 8 • section 53 (1) (a)
- 9 • section 54 (2) (a) (i)
- 10 • section 54 (4) (d) (ii)
- 11 • section 55 (3) (1st mention)
- 12 • section 56 (3) (1st mention)
- 13 • section 56 (5) (1st mention)
- 14 • section 56 (6) (1st mention)
- 15 • section 60 heading
- 16 • section 60 (1)
- 17 • section 64 (5) (2nd mention)

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

20 **[1.193] Title**

21 *substitute*

22 An Act to establish an Exhibition Park Corporation

23 **[1.194] Section 1**

24 *substitute*

25 **1 Name of Act**

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

- 1 **[1.195] Section 2**
- 2 *substitute*
- 3 **2 Dictionary**
- 4 The dictionary at the end of this Act is part of this Act.
- 5 *Note 1* The dictionary at the end of this Act defines certain terms used in this
6 Act.
- 7 *Note 2* A definition in the dictionary applies to the entire Act unless the
8 definition, or another provision of the Act, provides otherwise or the
9 contrary intention otherwise appears (see Legislation Act, s 155 and
10 s 156 (1)).
- 11 **3 Notes**
- 12 A note included in this Act is explanatory and is not part of this Act.
- 13 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
14 notes.

- 15 **[1.196] Part 2**
- 16 *substitute*

- 17 **Part 2 Establishment and functions of**
- 18 **corporation**
- 19 *Note for pt 2*
- 20 The governance of territory authorities, including the corporation, is
21 regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as
22 well as the Act that establishes them.
- 23 The FMA, pt 9 deals, for example, with the corporate status of territory
24 authorities and their powers, the make-up of governing boards, the
25 responsibilities of the governing board and board members, how
26 governing board positions can be ended, meetings of governing boards
27 and conflicts of interest.

1 **Division 2.1** **Establishment and functions of**
2 **corporation**

3 **4** **Establishment of corporation**

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

5 **5** **Functions of corporation**

6 The corporation has the following functions:

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

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

- 24 1 hosting sales (whether retail or wholesale) and markets
25 2 providing catering for functions, exhibitions, shows and other events

26 *Note 1* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 Legislation Act, s 126 and s 132).

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

4 **6 Exercise of corporation's functions**

5 (1) In this section:

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

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

10 (a) hold land under lease;

11 (b) assign and surrender leases;

12 (c) grant subleases;

13 (d) acquire, hold and dispose of personal property;

14 (e) enter into contracts, other than contracts of employment;

15 (f) grant licences to people to use corporation land for purposes
16 for which the corporation is authorised to use the land;

17 (g) charge for admission to corporation land;

18 (h) grant, subject to any charges and other terms and conditions
19 the corporation considers appropriate, rights to televise,
20 broadcast, film or record activities conducted on or in relation
21 to corporation land;

22 (i) charge for the use of facilities and services provided by the
23 corporation on or in relation to corporation land;

24 (j) advertise and promote activities conducted on or in relation to
25 corporation land;

26 (k) give prizes and awards to people in relation to activities
27 conducted on or in relation to corporation land.

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

15 **7 Sufficient revenue policy**

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

20 **[1.197] Part 3**

21 *substitute*

22 **Division 2.2 Governing board**

23 **8 Establishment of governing board**

24 The corporation has a governing board.

1 **9 Governing board members**

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

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

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

7 **[1.198] Part 4**

8 *renumber as part 3*

9 **[1.199] Section 18**

10 *omit*

11 *trust*

12 *substitute*

13 *corporation*

14 **[1.200] Section 18 (as amended)**

15 *renumber as section 10*

16 **[1.201] Part 5**

17 *renumber as part 4*

18 **[1.202] Section 22**

19 *substitute*

20 **11 Application of corporation money**

21 The money of the corporation must be applied only—

22 (a) in payment of the costs, expenses or other obligations of the
23 corporation under this Act; or

24 (b) in payment of remuneration and allowances payable to anyone
25 appointed under this Act.

-
- 1 **[1.203] Section 26**
- 2 *omit*
- 3 trust
- 4 *substitute*
- 5 corporation
- 6 **[1.204] Section 26 (as amended)**
- 7 *renumber as section 12*
- 8 **[1.205] Part 6**
- 9 *renumber as part 5*
- 10 **[1.206] Section 28 (1)**
- 11 *omit*
- 12 trust may, under its common seal and
- 13 *substitute*
- 14 corporation may,
- 15 **[1.207] Section 28 (as amended)**
- 16 *renumber as section 13*
- 17 **[1.208] Part 7**
- 18 *renumber as part 6*
- 19 **[1.209] Section 29**
- 20 *omit*

1 **[1.210] Section 29A**

2 *substitute*

3 **14 Corporation's annual reports**

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

7 (a) any approvals given by the Minister under the following
8 provisions of the Act during the year:

- 9 • section 5 (c) (Functions of corporation)
10 • section 6 (4) (Exercise of corporation's functions)
11 • section 13 (1) (Power to make by-laws); and

12 (b) any direction given by the Minister to the corporation under
13 section 7 (Sufficient revenue policy) during the year.

14 **[1.211] Section 30**

15 *substitute*

16 **15 Racing Act 1999 etc not affected**

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

19 **[1.212] Section 31**

20 *renumber as section 16*

21 **[1.213] Schedule 1, reference**

22 *substitute*

23 (see dict, def *national exhibition centre*)

1 **[1.214] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 2)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 8 • ACT
- 9 • exercise
- 10 • function
- 11 • under.

12 *corporation* means the Exhibition Park Corporation.

13 *governing board* means the governing board of the corporation.

14 *national exhibition centre* means the land described in schedule 1.

15 **Part 1.16 Planning and Land Act 2002**

16 **[1.215] Section 9 (3), note**

17 *substitute*

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

20 **[1.216] Part 4.1 heading, new note**

21 *insert*

22 *Note for pt 4.1*

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

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

6 **[1.217] Section 38**

7 *substitute*

8 **38 Establishment of land agency**

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

10 **[1.218] Section 39 (4) and notes**

11 *substitute*

12 (4) The land agency must exercise its functions—

13 (a) in accordance with the objectives of the territory plan; and

14 (b) in accordance with the latest statement of intent for the land
15 agency.

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

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

21 **[1.219] Section 40, note**

22 *substitute*

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

24 **[1.220] Sections 41 to 43**

25 *omit*

1 **[1.221] Part 4.2 heading**

2 *substitute*

3 **Part 4.2 Financial and general land**
4 **agency provisions**

5 *Note for pt 4.2*

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

8 **[1.222] Division 4.2.1**

9 *omit*

10 **[1.223] Division 4.2.2**

11 *omit*

12 **[1.224] Division 4.2.3 heading**

13 *omit*

14 **[1.225] Sections 47 to 49**

15 *renumber as sections 41 to 43*

16 **[1.226] Section 50**

17 *omit*

18 **[1.227] Division 4.2.4 heading**

19 *omit*

20 **[1.228] Section 51**

21 *omit*

1 **[1.229] Section 52 (1)**

2 *substitute*

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

5 **[1.230] Sections 53 (1) and 55 (a)**

6 *omit*

7 section 52

8 *substitute*

9 section 44

10 **[1.231] Sections 52 to 56 (as amended)**

11 *renumber as sections 44 to 48*

12 **[1.232] Part 4.3 heading**

13 *substitute*

14 **Part 4.3 Land agency governing board**

15 **[1.233] Sections 57 and 58**

16 *substitute*

17 **49 Establishment of land agency board**

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

19 **50 Land agency board members**

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

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

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

- 1 (2) The Minister must try to ensure that the following disciplines and
2 areas of expertise are represented among the members appointed:
- 3 (a) land development;
4 (b) economics;
5 (c) public law;
6 (d) finance or accounting;
7 (e) public administration;
8 (f) engineering.
- 9 (3) The following people must not be appointed as members of the land
10 agency board:
- 11 (a) the chief planning executive;
12 (b) a member of the authority staff.
- 13 (4) The appointment of a member, other than the chief executive
14 officer, must be for a term of not longer than 4 years.
- 15 *Note* A person may be reappointed to a position if the person is eligible to be
16 appointed to the position (see Legislation Act, s 208 and dict, pt 1,
17 def *appoint*).

18 **[1.234] Sections 59 to 61**

19 *omit*

20 **[1.235] Part 4.4**

21 *omit*

22 **[1.236] Part 4.5 heading**

23 *substitute*

24 **Part 4.4 Land agency staff and**
25 **consultants**

- 1 **[1.237] Division 4.5.1**
2 *omit*
- 3 **[1.238] Division 4.5.2 heading**
4 *omit*
- 5 **[1.239] Section 72**
6 *omit*
7 are
8 *substitute*
9 must be
- 10 **[1.240] Sections 72 to 74 (as amended)**
11 *renumber as sections 51 to 53*
- 12 **[1.241] Section 75**
13 *omit*
- 14 **[1.242] Sections 76 and 77**
15 *renumber as sections 54 and 55*
- 16 **[1.243] Dictionary, definition of *business plan* and *chief***
17 ***executive officer***
18 *substitute*
19 *chief executive officer* means the chief executive officer of the land
20 agency.
- 21 **[1.244] Dictionary, definitions of *land agency*, *land agency board*,**
22 ***land agency board member*, *land agency chairperson* and**
23 ***land agency deputy chairperson***
24 *substitute*
25 *land agency* means the Land Development Agency.
-

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

2 *relocate to dictionary*

3 **[1.250] Section 4, remainder**

4 *substitute*

5 **2 Dictionary**

6 The dictionary at the end of this Act is part of this Act.

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

9 *Note 2* A definition in the dictionary (including a signpost definition) applies to
10 the entire Act unless the definition, or another provision of the Act,
11 provides otherwise or the contrary intention otherwise appears (see
12 Legislation Act, s 155 and s 156 (1)).

13 **3 Notes**

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

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

17 **4 Administration Act definitions**

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

20 **[1.251] Sections 5 and 6**

21 *substitute*

22 **5 Public trustee**

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

- 1 **6** **Deputy public trustee**
- 2 (1) The Deputy Public Trustee is the person performing the duties of
- 3 deputy public trustee (however described) in the public service.
- 4 (2) The deputy public trustee may exercise the functions of the public
- 5 trustee, subject to any direction of the public trustee.
- 6 (3) A person dealing with the deputy public trustee need not inquire
- 7 whether the deputy public trustee, in exercising a function in
- 8 relation to a dealing—
- 9 (a) was subject to a direction of the public trustee; or
- 10 (b) complied with a direction of the public trustee to which the
- 11 deputy public trustee was subject.

12 **[1.252] Section 8 (2)**

13 *substitute*

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

17 **[1.253] Section 10**

18 *substitute*

19 **10** **Protection of public trustee etc from liability**

- 20 (1) In this section:
- 21 *official* means—
- 22 (a) a person who holds, or has held, the position of public trustee
- 23 or deputy public trustee; or
- 24 (b) a person who is, or has been, an agent of the public trustee; or
- 25 (c) a public servant who is exercising, or has exercised, a function
- 26 relating to the business or affairs of the public trustee.

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

8 **[1.254] Sections 50 and 52**

9 *omit*

10 **[1.255] Section 53**

11 *substitute*

12 **53 Ending board member appointments**

- 13 (1) This section applies to a board member other than the public trustee.
14 (2) The Minister may end the member's appointment—
15 (a) if the member contravenes a territory law; or
16 (b) for misbehaviour; or
17 (c) if the member becomes bankrupt or executes a personal
18 insolvency agreement; or
19 (d) if the member is convicted, or found guilty, in Australia of an
20 offence punishable by imprisonment for at least 1 year; or
21 (e) if the member is convicted, or found guilty, outside Australia
22 of an offence that, if it had been committed in the ACT, would
23 be punishable by imprisonment for at least 1 year; or
24 (f) if the member exercises the member's functions other than in
25 accordance with section 53A (Honesty, care and diligence of
26 board members); or

- 1 (g) if the member fails to take all reasonable steps to avoid being
2 placed in a position where a conflict of interest arises during
3 the exercise of the member's functions; or
- 4 (h) if the member contravenes section 53D (Disclosure of interests
5 by board members); or
- 6 (i) if the member is absent from 3 consecutive meetings of the
7 board, otherwise than on approved leave; or
- 8 (j) for physical or mental incapacity, if the incapacity substantially
9 affects the exercise of the member's functions.
- 10 *Note* A person's appointment also ends if the person resigns (see Legislation
11 Act, s 210).
- 12 (3) The Minister may also end the appointment of the member (the
13 ***member concerned***) if the board tells the Minister in writing that it
14 has resolved, by a majority of at least $\frac{2}{3}$ of the members, to
15 recommend to the Minister that the member's appointment be
16 ended.
- 17 (4) The board may pass a resolution mentioned in subsection (3) only
18 if—
- 19 (a) at least 3 weeks written notice of the intention to consider the
20 proposed resolution has been given to the member concerned;
21 and
- 22 (b) the member concerned has been given an opportunity to make
23 submissions and present documents to a meeting of the board;
24 and
- 25 (c) if the member concerned has used the opportunity mentioned
26 in paragraph (b)—a summary of the member's submissions is
27 recorded in the minutes of the board and a copy of any
28 documents presented is included in the minutes.
- 29 (5) A member who is a public servant ceases to hold office as a member
30 if the member ceases to be a public servant.

1 **53A Honesty, care and diligence of board members**

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

6 **53B Conflict of interest**

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

10 **53C Agenda to require disclosure of interest item**

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

14 **53D Disclosure of interests by board members**

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

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

22 (2) The disclosure must be recorded in the board's minutes and, unless
23 the board otherwise decides, the member must not—

24 (a) be present when the board considers the issue; or

25 (b) take part in a decision of the board on the issue.

26 **Example**

27 Albert, Boris and Chloe are members of the board. They have an interest in an
28 issue being considered at the board meeting and they disclose the interest as soon

- 1 as they become aware of it. Albert's and Boris's interests are minor but Chloe has
2 a direct financial interest in the issue.
- 3 The board considers the disclosures and decides that because of the nature of the
4 interests:
- 5 • Albert may be present when the board considers the issue but not take part in
6 the decision
 - 7 • Boris may be present for the consideration and take part in the decision.
- 8 The board does not make a decision allowing Chloe to be present or take part in
9 the board's decision. Accordingly, since Chloe has a material interest she cannot
10 be present for the consideration of the issue or take part in the decision.
- 11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).
- 14 (3) Any other board member who also has a material interest in the
15 issue must not be present when the board is considering its decision
16 under subsection (2).
- 17 (4) In this section:
- 18 *associate*, of a person, means—
- 19 (a) the person's business partner; or
 - 20 (b) a close friend of the person; or
 - 21 (c) a family member of the person.
- 22 *executive officer*, of a corporation, means a person (however
23 described) who is concerned with, or takes part in, the corporation's
24 management, whether or not the person is a director of the
25 corporation.
- 26 *indirect interest*—without limiting the kinds of indirect interests a
27 person may have, a person has an *indirect interest* in an issue if any
28 of the following has an interest in the issue:
- 29 (a) an associate of the person;

- 1 (b) a corporation if the corporation has not more than
2 100 members and the person, or an associate of the person, is a
3 member of the corporation;
- 4 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 5 (d) a corporation if the person, or an associate of the person, is an
6 executive officer of the corporation;
- 7 (e) the trustee of a trust if the person, or an associate of the person,
8 is a beneficiary of the trust;
- 9 (f) a member of a firm or partnership if the person, or an associate
10 of the person, is a member of the firm or partnership;
- 11 (g) someone else carrying on a business if the person, or an
12 associate of the person, has a direct or indirect right to
13 participate in the profits of the business.

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

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

20 **53E Reporting of disclosed interests to Minister**

- 21 (1) Within 3 months after the day a material interest is disclosed under
22 section 53D (1), the senior member of the board must report to the
23 Minister in writing about—
- 24 (a) the disclosure; and
- 25 (b) the nature of the interest disclosed; and
- 26 (c) any decision by the board under section 53D (2).
- 27 (2) The senior member must also give the Minister, not later than
28 31 days after the end of each financial year, a statement that sets out

- 1 the information given to the Minister in reports under subsection (1)
2 that relate to disclosures made during the previous financial year.
- 3 (3) The Minister must give a copy of the statement to the relevant
4 committee of the Legislative Assembly within 31 days after the day
5 the Minister receives the statement.
- 6 (4) In this section:
- 7 *relevant committee* means—
- 8 (a) a standing committee of the Legislative Assembly nominated
9 by the Speaker for subsection (3); or
- 10 (b) if no nomination under paragraph (a) is in effect—the standing
11 committee of the Legislative Assembly responsible for public
12 accounts.
- 13 **53F Protection of board members from liability**
- 14 (1) A board member is not civilly liable for anything done or omitted to
15 be done honestly and without recklessness—
- 16 (a) in the exercise of a function under a territory law; or
- 17 (b) in the reasonable belief that the act or omission was in the
18 exercise of a function under a territory law.
- 19 (2) Any liability that would, apart from this section, attach to a board
20 member attaches instead to the Territory.
- 21 **53G Indemnification and exemption of board members**
- 22 (1) The public trustee must not exempt a board member (whether
23 directly or through another entity) from liability to the public trustee
24 or the Territory.

- 1 (2) The public trustee must not indemnify a board member (whether
2 directly or through another entity and whether by agreement or by
3 making a payment) against any of the following liabilities incurred
4 as a board member:
- 5 (a) a liability owed to the public trustee or the Territory;
6 (b) a liability owed to someone other than the public trustee or the
7 Territory that did not arise from honest conduct.
- 8 (3) The public trustee must not indemnify a board member (whether
9 directly or through another entity and whether by agreement or by
10 making a payment) against legal costs incurred as a member if the
11 costs are incurred—
- 12 (a) in defending or resisting a proceeding if the person is found to
13 have a liability for which the person could not be indemnified
14 under subsection (2); or
- 15 *Note* A board member is not personally liable for certain acts done or
16 omissions made honestly and without recklessness (see s 53F).
- 17 (b) in defending or resisting a criminal proceeding in which the
18 person is found guilty.

19 **[1.256] Section 54**

20 *substitute*

21 **Division 6.2 Board meetings**

22 **54 Time and place of board meetings**

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

1 **54A Presiding member at meetings**

2 (1) The senior member presides at all meetings at which the senior
3 member is present.

4 (2) If the senior member is absent, the member chosen by the members
5 present presides.

6 **54B Quorum at meetings**

7 Business may be carried on at a meeting of the board only if at least
8 2 members are present.

9 **54C Voting at meetings**

10 (1) At a meeting of the board each member has a vote on each question
11 to be decided.

12 (2) A question is decided by a majority of the votes of the members
13 present and voting but, if the votes are equal, the member presiding
14 has a deciding vote.

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

19 **54D Conduct of meetings etc**

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

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

5 **Examples**

6 a phone link, a satellite link

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

- 10 (3) A board member who takes part in a meeting conducted under
11 subsection (2) is taken, for all purposes, to be present at the meeting.

- 12 (4) A resolution is a valid resolution of the board, even if it is not
13 passed at a meeting of the board, if all members agree to the
14 proposed resolution in writing or by electronic communication.

15 **Example of electronic communication**

16 email

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

18 **[1.257] Division 6.2**

19 *renumber as division 6.3*

20 **[1.258] New dictionary**

21 *insert*

22 **Dictionary**

23 (see s 2)

24 *Note 1* The Legislation Act contains definitions and other provisions relevant to
25 this Act.

26 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 27 • appoint
28 • establish

- 1 • exercise
2 • function
3 • liability
4 • month
5 • power
6 • public servant
7 • will.

8 **Part 1.19 Remuneration Tribunal Act 1995**

9 **[1.259] Schedule 1, part 1.2**

10 *insert*

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

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

17 **Part 1.20 Stadiums Authority Act 2000**

18 **[1.260] Section 2, note 1**

19 *substitute*

20 *Note 1* The dictionary at the end of this Act defines certain terms used in this
21 Act, and includes references (*signpost definitions*) to other terms
22 defined elsewhere in this Act.

1 **[1.261] Part 2**

2 *substitute*

3 **Part 2 The authority**

4 *Note for pt 2*

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

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

13 **Division 2.1 Establishment and functions of**
14 **authority**

15 **4 Establishment of authority**

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

17 **5 Functions of authority**

18 The authority has the following functions:

- 19 (a) owning, operating or managing sporting or entertainment
20 facilities prescribed by regulation;
- 21 (b) organising sporting, cultural, entertainment or commercial
22 events or festivals, or conducting them at facilities mentioned
23 in paragraph (a), either alone or with others;
- 24 (c) providing facilities (including organisational or catering
25 facilities) for an event or festival mentioned in paragraph (b) or
26 for meetings or functions of any other kind, whether public or
27 private;

- 1 (d) operating on a sound commercial basis;
- 2 (e) maximising the sustainable return to the Territory on its
3 investment in the authority;
- 4 (f) providing services to the community in accordance with an
5 agreement with the Minister;
- 6 (g) implementing any directions given to the authority by the
7 Minister under this Act;
- 8 (h) exercising any other function given to it under this Act or any
9 other territory law.
- 10 *Note* A provision of a law that gives an entity (including a person) a function
11 also gives the entity powers necessary and convenient to exercise the
12 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

13 **6 Restrictions on dealings with assets**

- 14 (1) In this section:
- 15 *subsidiary* means a company that, for the Corporations Act, is a
16 subsidiary of the authority.
- 17 (2) The authority or a subsidiary must not, without the Treasurer's prior
18 written approval—
- 19 (a) enter into a contract involving the payment or receipt of a total
20 amount larger than \$500 000; or
- 21 (b) sell or otherwise dispose of, or mortgage or otherwise give
22 security over, a significant asset; or
- 23 (c) mortgage or give a charge over all, or a significant part, of its
24 undertakings or assets.
- 25 (3) An approval of the Treasurer may be given subject to conditions or
26 restrictions stated in the approval.

- 1 (4) The authority or a subsidiary must not dispose of any of its main
2 undertakings unless the Legislative Assembly has, by resolution,
3 approved the disposal.
- 4 (5) A purported disposal in contravention of subsection (4) is void.
- 5 (6) For this section, an asset, or part of the undertakings or assets, of the
6 authority or a subsidiary is *significant* if—
- 7 (a) it is significant when interpreted in accordance with accounting
8 standards relating to materiality ordinarily used in Australia
9 when the decision about whether it is significant is made; or
- 10 (b) a document published by the authority or subsidiary identifies
11 it as significant (however described); or
- 12 (c) a memorandum of understanding or other agreement between
13 the Minister or Treasurer and the authority or subsidiary
14 identifies it as significant (however described); or
- 15 (d) it is prescribed under the financial management guidelines
16 under the *Financial Management Act 1996* for this section.
- 17 (7) This section is additional to the *Financial Management Act 1996*,
18 part 9 (Governance of territory authorities).

19 **Division 2.2 Governing board**

20 **7 Establishment of governing board**

21 The authority has a governing board.

22 **8 Governing board members**

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

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

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

1 **9 Functions of governing board**

2 The governing board has the following functions:

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

7 **[1.262] Part 3 heading**

8 *substitute*

9 **Part 3 Authority staff and consultants**

10 **[1.263] Division 3.1**

11 *omit*

12 **[1.264] Division 3.2 heading**

13 *omit*

14 **[1.265] Sections 22 and 23**

15 *substitute*

16 **10 Staff**

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

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

1 **11 Consultants**

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

5 **[1.266] Parts 4 and 5**

6 *substitute*

7 **Part 4 Miscellaneous**

8 **12 Ministerial directions**

- 9 (1) The Minister may give the authority written directions in relation to
10 the exercise of its functions.
11 (2) Before giving a direction the Minister must—
12 (a) tell the governing board about the effect of the proposed
13 direction; and
14 (b) give the board a reasonable opportunity to comment on the
15 proposed direction; and
16 (c) consider any comments made by the board.
17 (3) The Minister must present a copy of a direction to the Legislative
18 Assembly within 6 sitting days after the day the Minister makes it.
19 (4) On receiving a direction under this section, the authority must
20 comply with it.
21 (5) The Territory must reimburse the authority for the net reasonable
22 expense of complying with a direction.
23 (6) The *net reasonable expense* of complying with a direction is—
24 (a) if the direction requires the authority to do something that,
25 apart from the direction, it would not have done—the

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

15 **13 Authority's annual report**

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

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

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

25 **14 Regulation-making power**

26 The Executive may make regulations for this Act.

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

1 **[1.267] Dictionary**

2 *substitute*

3 **Dictionary**

4 (see s 2)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act dict, pt 1, defines the following terms:

- 8 • exercise
- 9 • function.

10 ***authority*** means the Stadiums Authority.

11 ***governing board*** means the governing board of the authority.

12 **Part 1.21 Taxation Administration Act 1999**

13 **[1.268] Section 97 (d) (v)**

14 *substitute*

- 15 (v) for the *Financial Management Act 1996*, section 104 (Act
16 of grace payments) or section 105 (Waiver of debts
17 etc)—the Treasurer;

18 **Part 1.22 University of Canberra Act 1989**

19 **[1.269] Section 35 (2)**

20 *substitute*

- 21 (2) The *Financial Management Act 1996*, part 8 (Financial provisions
22 for territory authorities) applies in relation to the university as if—

- 23 (a) a reference to the ***governing board*** of the university were a
24 reference to the council; and

- 1 (b) a reference to the *chair* of the governing board were a
2 reference to the chancellor; and
- 3 (c) a reference to the *chief executive officer* of the university were
4 a reference to the vice-chancellor; and
- 5 (d) the part were modified as set out in schedule 1.

6 **[1.270] Schedule 1**

7 *substitute*

8 **Schedule 1 Modifications of Financial**
9 **Management Act 1996, pt 8**

10 (see s 35 (2) (d))

11 **[1.1] Section 56**

12 *substitute*

13 **56 Responsibilities of governing boards**

- 14 (1) This section applies to a territory authority if the authority has a
15 governing board.
- 16 (2) The governing board of the territory authority is responsible, under
17 the responsible Minister, for the efficient and effective financial
18 management of the authority.
- 19 (3) Without limiting subsection (2), the governing board of the territory
20 authority is responsible, under the responsible Minister, for ensuring
21 the following:
- 22 (a) that expenses incurred by the authority are properly authorised;
- 23 (b) that payments made by the authority are properly authorised
24 and correctly made;

- 1 (c) that the staff of the authority comply with the requirements of
2 this Act;
- 3 *Note* A reference to an Act includes a reference to the statutory
4 instruments made or in force under the Act, including in this case
5 the financial management guidelines (see Legislation Act, s 104).
- 6 (d) that proper accounts and records are kept of the transactions
7 and affairs of the authority in accordance with generally
8 accepted accounting principles;
- 9 (e) that adequate control is maintained over the assets of the
10 authority and assets under the authority's control;
- 11 (f) that adequate control is maintained over the incurring of
12 liabilities by the authority.

13 **[1.2] Section 57**

14 *substitute*

15 **57 Banking accounts of territory authorities**

- 16 (1) A territory authority may open 1 or more banking accounts for the
17 purposes of the authority.
- 18 (2) A territory authority must at all times maintain at least 1 banking
19 account.

20 **[1.3] Section 58**

21 *substitute*

22 **58 Investment by territory authorities**

- 23 (1) Funds not immediately required for the purposes of a territory
24 authority may be invested—
- 25 (a) on deposit with an authorised deposit-taking institution; or
26 (b) in securities of the Territory, a State or the Commonwealth; or

-
- 1 (c) by the Treasurer, for the territory authority, in an investment
2 mentioned in section 38 (1) (a) to (e); or
- 3 (d) in an investment prescribed under the financial management
4 guidelines for this paragraph; or
- 5 (e) on deposit with an eligible money market dealer under the
6 Corporations Act; or
- 7 (f) in bills of exchange that—
- 8 (i) have been accepted by an authorised deposit-taking
9 institution (an *ADI*); and
- 10 (ii) have been endorsed by 1 or more ADIs; and
- 11 (iii) have not been endorsed by anyone other than an ADI.
- 12 (2) However, the funds of the territory authority may only be invested
13 under this section to increase or protect the financial wealth of the
14 authority.
- 15 (3) Transfers between the territory banking account and the banking
16 account of a territory authority to facilitate investments may be
17 made without appropriation.
- 18 (4) Interest received by the Treasurer for the investment of funds of a
19 territory authority must be paid to the territory authority.
- 20 (5) However, if an investment of funds of a territory authority is made
21 or managed by a department, the department may deduct from the
22 interest received by the department for the investment—
- 23 (a) a fee charged by the department for making or managing the
24 investment; and
- 25 (b) expenses reasonably incurred by the department in making or
26 managing the investment.
- 27 (6) Interest that is to be paid to a territory authority under subsection (4)
28 may be paid direct to the territory authority or through the territory
29 banking account.
-

1 (7) If interest to be paid to a territory authority is paid into the territory
2 banking account under subsection (6), the interest may be paid to
3 the authority from that account without further appropriation.

4 (8) This section does not apply to money held on trust by a territory
5 authority.

6 **[1.4] Section 61 (Territory authority statements of intent)**

7 *omit*

8 **[1.5] Section 62 (Presentation of statements of intent of**
9 **territory authorities)**

10 *omit*

11 **[1.6] Section 63**

12 *substitute*

13 **63 Annual financial statements of territory authorities**

14 (1) A territory authority must prepare annual financial statements
15 relating to its operations during each year.

16 (2) The annual financial statements for a year must be prepared
17 within—

18 (a) 2 months after 31 December in each year; or

19 (b) any further period that the Treasurer allows in writing.

20 (3) The annual financial statements must be prepared in accordance
21 with generally accepted accounting principles.

22 (4) The annual financial statements must include—

23 (a) the financial statements required under the financial
24 management guidelines; and

25 (b) any other statement necessary to fairly reflect the financial
26 operations of the authority during the year and its financial
27 position at the end of the year.

1 **[1.7] Section 65**

2 *substitute*

3 **65 Audit of annual financial statements**

- 4 (1) The chief executive officer of a territory authority must give the
5 auditor-general a copy of the annual financial statements of the
6 authority for a financial year within 2 weeks after preparing them.
- 7 (2) The copy of the financial statements given to the auditor-general
8 must have endorsed on them, or attached to them, a signed copy of
9 the statement of responsibility made for the financial statements
10 under section 64.
- 11 (3) The auditor-general must give the chief executive officer an audit
12 opinion about the financial statements as soon as practicable after
13 the auditor-general receives them.

14 **[1.8] Section 67**

15 *substitute*

16 **67 Treasurer may require interim financial statements etc**

- 17 (1) The Treasurer may, in writing, direct the chief executive officer of a
18 territory authority to give the Minister and Treasurer financial or
19 other statements relating to the authority.
- 20 (2) The Treasurer must present a copy of the direction to the Legislative
21 Assembly within 6 sitting days after the day when the Treasurer
22 gives the direction.
- 23 (3) The relevant person must prepare the statements required by the
24 direction and give them to the responsible Minister and Treasurer
25 within 1 month after the day the person receives the direction or, if a
26 longer period for compliance is stated in the direction, within the
27 longer period.

- 1 (4) In this section:
2 *relevant person*, for a territory authority, means—
3 (a) if the authority has a governing board—the chair of the
4 governing board; or
5 (b) if the authority does not have a governing board—the chief
6 executive officer.

7 **[1.9] Section 68 (Statements of performance of territory**
8 **authorities)**

9 *omit*

10 **[1.10] Section 69 (Responsibility for territory authority**
11 **statements of performance)**

12 *omit*

13 **[1.11] Section 70 (Scrutiny of territory authority statements of**
14 **performance)**

15 *omit*

16 **[1.12] Section 71 (Presentation of territory authority statements**
17 **of performance)**

18 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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