

**NORTHERN TERRITORY OF AUSTRALIA**

**GOVERNMENT OWNED CORPORATIONS ACT**

As in force at 8 March 2007

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 8 March 2007

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## GOVERNMENT OWNED CORPORATIONS ACT

**An act to provide for the establishment and operation of territory owned enterprises as government owned corporations**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Government Owned Corporations Act*.

#### **2 Objective**

The objective of this Act is to provide a basis:

- (a) for improved performance by Government owned businesses; and
- (b) for greater sustainable financial returns to the Territory on its investment in those businesses,

by providing a framework of greater autonomy combined with appropriate accountability of government businesses.

#### **3 Definitions**

In this Act, unless the contrary intention appears:

***chairperson***, in relation to a Government owned corporation, means the person appointed under section 18 to be the chairperson of the corporation and includes a deputy chairperson while acting as the chairperson under section 19.

***chief executive officer***, in relation to a Government owned corporation, means the person appointed under section 16 to be the chief executive officer of the corporation and includes a person acting as the chief executive officer under section 17.

***director***, in relation to a Government owned corporation, means a director of the corporation under section 13 and includes a person acting as a director under section 14.

**Government owned corporation** means a statutory corporation that is declared to be a Government owned corporation by the Act by which it is incorporated or continued in existence.

**officer**, in relation to a Government owned corporation, means:

- (a) a director of the Government owned corporation;
- (b) the chief executive officer of the Government owned corporation; or
- (c) any other person who is concerned, or takes part, in the Government owned corporation's management.

**portfolio Minister** means the minister referred to in section 10.

**shareholding Minister** means the person who is the shareholding minister under section 8.

**subsidiary** means a body corporate that is a subsidiary of a Government owned corporation as determined in accordance with the Corporations Act 2001.

## **Part 2                      Establishment of Government owned corporations**

### **4                      Objectives of Government owned corporation**

The objectives of a Government owned corporation are:

- (a) to operate at least as efficiently as any comparable business; and
- (b) to maximise the sustainable return to the Territory on its investment in the corporation.

### **5                      Status of Government owned corporations**

- (1) A Government owned corporation or subsidiary:
  - (a) is not within the shield of the Crown;
  - (b) does not represent the Territory except by express agreement in writing with the shareholding Minister of the Government owned corporation; and
  - (c) cannot render the Territory liable for the debts, liabilities or obligations of the Government owned corporation or any of its subsidiaries.

- (2) Subsection (1) does not apply if this Act or another Act expressly provides otherwise.

## **Part 3            Structure and operation of Government owned corporations**

### **Division 1        Structure of Government owned corporations**

#### **6                Corporations legislation**

- (1) A Government owned corporation is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.
- (2) Despite subsection (1), the Regulations may declare that a matter relating to a Government owned corporation is an applied Corporations legislation matter for the purposes of Part 4 of the *Corporations Reform (Northern Territory) Act 2001* in relation to an excluded Corporations legislation provision or provisions, with the modifications, additions, exceptions, omissions or substitutions that are specified in the Regulations.

#### **7                Share capital, shares and shareholder**

- (1) A Government owned corporation is to have a share capital and shares as provided in its constitution.
- (2) A Government owned corporation can only have one shareholder.
- (3) The shareholding Minister holds the shares in the Government owned corporation on behalf of the Territory.
- (4) A Government owned corporation is to maintain a register that identifies the current shareholding Minister.

#### **8                Shareholding Minister**

- (1) Unless another minister is nominated by the Chief Minister under subsection (2), the Treasurer is the shareholding Minister.
- (2) The Chief Minister may nominate in writing a minister (including himself or herself), by name or by reference to a ministerial office, to be the shareholding Minister.
- (3) The portfolio Minister cannot be the shareholding Minister.

- (4) The shareholding Minister may:
- (a) issue directions to the board of the Government owned corporation;
  - (b) require the board to provide him or her with information relating to the Government owned corporation; and
  - (c) direct the board to use or establish policies under which the Government owned corporation is to operate.
- (5) The shareholding Minister may only issue a direction under subsection (4)(a) or (c) if he or she has:
- (a) consulted the board; and
  - (b) requested the board to advise the shareholding Minister whether, in its opinion, complying with the direction would not be in the best interests of the Government owned corporation or any of its subsidiaries.
- (6) The shareholding Minister must table in the Legislative Assembly a copy of a direction under subsection (4) within 6 sitting days after the direction was given.

## **9 Delegation by shareholding Minister**

- (1) The shareholding Minister may delegate to a minister any of his or her powers and functions under this Act.
- (2) A delegation:
- (a) is to be in writing; and
  - (b) cannot be made to the portfolio Minister.

## **10 Portfolio Minister**

The portfolio Minister of a Government owned corporation is the minister allotted responsibility for the administration of the Act by which the Government owned corporation is incorporated or continued in existence.

## **11 Constitution of Government owned corporations**

- (1) A Government owned corporation is to have a constitution approved by the Minister under subsection (3).



- (2) A Government owned corporation, or a unit of administration that is to become a Government owned corporation, may submit a proposed constitution, or a proposed amendment to a constitution, to the shareholding Minister.
- (3) The shareholding Minister may approve a proposed constitution, or an amendment to a constitution, submitted to the Minister under subsection (2).
- (4) A proposed constitution, or an amendment to a constitution, submitted to the shareholding Minister under subsection (2) comes into effect from the date on which it is approved by the shareholding Minister or a later date specified in the approval.
- (5) The constitution of a Government owned corporation is, subject to this Act, to have, as far as practicable, the same operation and effect in relation to the Government owned corporation as the constitution of a company has in relation to the company.
- (6) The constitution of a Government owned corporation may contain matters that for a company would be found in the Corporations Act 2001.
- (7) The shareholding Minister may issue guidelines in relation to the contents of a constitution of a Government owned corporation.
- (8) The constitution may contain provisions other than those referred to in subsection (6) or (7) if the provisions are not inconsistent with a provision of this Act or of another Act.
- (9) The shareholding Minister must table in the Legislative Assembly a copy of the constitution, or an amendment to the constitution, of each Government owned corporation within 6 sitting days after the date on which the constitution or amendment came into effect.

## **12 Committees**

- (1) The board of a Government owned corporation:
  - (a) must establish an audit committee; and
  - (b) may establish other committees as it thinks fit.
- (2) A committee:
  - (a) must provide the board of a Government owned corporation with advice on any matter referred to it by the board; and
  - (b) must exercise the powers and perform the functions delegated to it by the board.

- (3) The chief executive officer of a Government owned corporation may not be a member of the corporation's audit committee.
- (4) The chairperson of a Government owned corporation's audit committee must be a director of the corporation.

## **Division 2            Officers of Government owned corporations**

### **13            Directors of Government owned corporations**

- (1) There is to be a board of directors for each Government owned corporation.
- (2) The chief executive officer of a Government owned corporation is a director of the corporation.
- (3) The constitution of a Government owned corporation is to specify the number of directors (in addition to the chief executive officer) of the corporation.
- (4) The board of directors of a Government owned corporation is to include, in addition to the chief executive officer, not less than 2 other directors appointed under subsection (5).
- (5) The Administrator may appoint a person to be a director of a Government owned corporation.
- (6) The Administrator may at any time terminate an appointment under subsection (5).
- (7) An appointment or termination of an appointment may only be made under subsection (5) or (6) on the recommendation of the shareholding Minister.
- (8) The directors of a Government owned corporation appointed under subsection (5) are to be appointed to the board having regard to the expertise necessary for the corporation to achieve its objectives.
- (9) The appointment of a director of a Government owned corporation under subsection (5) remains in force for the period, of less than 4 years, determined by the Administrator.

### **14            Acting directors**

- (1) The shareholding Minister may appoint a person to be an acting director of the Government owned corporation.

- (2) In the absence of a director of the Government owned corporation, the acting director:
  - (a) is, if available, to act in the place of the director; and
  - (b) while acting as director, has all the functions of the director and is taken to be a director of the Government owned corporation.
- (3) The shareholding Minister may at any time terminate an appointment under subsection (1).

## **15 Accountability of directors of Government owned corporations**

- (1) The board of a Government owned corporation is responsible for the operation of the corporation.
- (2) The board of a Government owned corporation is accountable to the shareholding Minister for the financial performance of the corporation.
- (3) If the board of a Government owned corporation forms the opinion that matters have arisen:
  - (a) that may prevent, or significantly affect, achievement of the objectives of the Government owned corporation and its subsidiaries in the corporation's statement of corporate intent; or
  - (b) that may prevent, or significantly affect, achievement of the targets in the corporation's statement of corporate intent,the board must immediately notify the shareholding Minister of its opinion and the reasons for the opinion.

## **16 Chief executive officer**

- (1) There is to be a chief executive officer for each Government owned corporation.
- (2) The Administrator may appoint a person as the chief executive officer of a Government owned corporation.
- (3) The Administrator may at any time terminate an appointment under subsection (2).
- (4) An appointment or termination of an appointment may only be made under subsection (2) or (3) on the recommendation of the shareholding Minister and the board of the Government owned corporation.

- (5) The chief executive officer of a Government owned corporation is, subject to the directions of the board of the corporation, responsible for the day to day management of the operation of the corporation.
- (6) The chief executive officer of a Government owned corporation may, subject to the directions of the board of the corporation, delegate any of his or her powers and functions to an employee of the Government owned corporation.
- (7) The chief executive officer of a Government owned corporation vacates office as the chief executive officer if:
  - (a) the appointment of the person as chief executive officer is terminated under subsection (3);
  - (b) the person resigns the office of chief executive officer by letter addressed to the shareholding Minister; or
  - (c) the person vacates the office of director in accordance with section 25.

#### **17 Acting chief executive officer**

- (1) The shareholding Minister may appoint a person to be the acting chief executive officer of a Government owned corporation during a period, or during all periods, when:
  - (a) the chief executive officer is, or is expected to be, absent from office or unable to exercise his or her powers or perform his or her functions under this or any other Act; or
  - (b) there is a vacancy in the office of chief executive officer.
- (2) The shareholding Minister may at any time terminate an appointment under subsection (1).
- (3) An appointment or termination of an appointment may only be made under subsection (1) or (2) on the recommendation of the board of the Government owned corporation.
- (4) An acting chief executive officer has all the powers and functions of the chief executive officer under this or any other Act.

#### **18 Chairperson**

- (1) There is to be a chairperson for each Government owned corporation.
- (2) The shareholding Minister may appoint a director to be chairperson of the board of a Government owned corporation.

- (3) The shareholding Minister may at any time terminate an appointment under subsection (2).
- (4) The chairperson of a Government owned corporation vacates office as chairperson if:
  - (a) the appointment of the person as chairperson is terminated under subsection (3);
  - (b) the person resigns the office of chairperson by letter addressed to the shareholding Minister; or
  - (c) the person vacates the office of director in accordance with section 25.

## **19 Deputy chairperson**

- (1) The shareholding Minister may appoint a director to be the deputy chairperson of the Government owned corporation.
- (2) The shareholding Minister may at any time terminate an appointment under subsection (1).
- (3) The deputy chairperson is to act as the chairperson of the Government owned corporation during the absence or inability to act of the chairperson.
- (4) The deputy chairperson of a Government owned corporation vacates office as deputy chairperson if:
  - (a) the appointment of the person as deputy chairperson is terminated under subsection (2);
  - (b) the person resigns the office of deputy chairperson by letter addressed to the shareholding Minister; or
  - (c) the person vacates the office of director in accordance with section 25.

## **20 Duties and liabilities of directors and other officers**

The duties and liabilities of directors that are specified in Part 2D.1 of Chapter 2D of the Corporations Act 2001 are, in relation to the directors of a Government owned corporation, an applied Corporations legislation matter for the purposes of Part 4 of the *Corporations Reform (Northern Territory) Act 2001*.

## **21 Government owned corporation not to indemnify officers**

- (1) A Government owned corporation must not:
  - (a) indemnify a person who is or has been an officer of the Government owned corporation against a liability incurred as an officer; or
  - (b) exempt a person who is or has been an officer of the Government owned corporation from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the Government owned corporation to do something that subsection (1) prohibits.
- (3) Subsection (1) does not prevent the Government owned corporation from indemnifying a person against civil liability (other than a liability to the Government owned corporation or a subsidiary of the Government owned corporation) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subsection (1) does not prevent the Government owned corporation from indemnifying a person against a liability for costs and expenses incurred by the person:
  - (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) In this section:

***indemnify*** includes indemnify indirectly through one or more interposed entities.

## **22 Term of office of directors of corporations**

- (1) A director (other than the chief executive officer) of a Government owned corporation holds, subject to section 25, office for the period determined by the Administrator under section 13(9).
- (2) The chief executive officer of a Government owned corporation holds, subject to section 25, office for the period that is specified in the chief executive officer's contract of employment.

### **23 Termination of appointments**

- (1) A person who terminates an appointment under this Act is not required to give a reason for the termination.
- (2) A termination of an appointment under this Act takes effect immediately or from a later date specified by the person who terminates the appointment.

### **24 Remuneration**

- (1) The shareholding Minister may determine the remuneration, including travelling and other allowances to be paid to a director (other than the chief executive officer) or an acting director of a Government owned corporation or a subsidiary.
- (2) The shareholding Minister may alter or revoke a determination under subsection (1) at any time, including after a person becomes a director or an acting director.
- (3) The *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act* does not apply in relation to an appointment under this Act.

### **25 Vacancy in office of director of corporation**

- (1) The office of a director of a Government owned corporation becomes vacant:
  - (a) if the director dies;
  - (b) if the director completes a term of office and is not re-appointed;
  - (c) if the director resigns the office by letter addressed to the shareholding Minister;
  - (d) if the appointment of the director is terminated under this Act;
  - (e) if the director is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post;
  - (f) if the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

- (g) if the director is:
    - (i) convicted in the Territory of an offence that is punishable by imprisonment for 12 months or more;
    - (ii) convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence punishable by imprisonment for 12 months or more; or
    - (iii) disqualified under Part 2D.6 of the Corporations Act 2001 from managing a corporation; or
  - (h) in the circumstances set out in the constitution of the Government owned corporation.
- (2) Subsection (1)(e) does not apply if the director is absent on leave granted by the board.

## **26 Disclosure of interests by directors**

- (1) If a director of a Government owned corporation has a direct or indirect interest in a matter being considered, or about to be considered, by the board of the corporation, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Penalty: 100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.
- (3) A director who has disclosed an interest under subsection (1):
- (a) must not, while the director has the interest, take part after the disclosure in any deliberation or decision of the board in relation to the matter in which the director has the interest; and
  - (b) is to be disregarded for the purpose of constituting a quorum of the board in relation to the deliberation or decision of the board in relation to the matter in which the director has the interest.
- (4) Subsection (3) does not apply to a director if the board resolves that the subsection does not apply to the director.
- (5) A director who has disclosed an interest under subsection (1) may withdraw from the meeting during a period of deliberation or decision of the board in relation to the matter in which the director has the interest, even if the board has made a resolution under subsection (4) in relation to the matter.



- (6) The board of a Government owned corporation is to maintain a register of the interests of the directors of the Government owned corporation.

## **27 Delegation by board**

- (1) The board of a Government owned corporation may, by resolution, delegate any of its powers and functions to:
- (a) a director of the board;
  - (b) a committee of the board;
  - (c) the chief executive officer; or
  - (d) any other person.
- (2) The board of a Government owned corporation is to advise the shareholding Minister of a delegation under subsection (1) of a power or function that is, in its opinion, significant.

## **Division 3 Public interest requirements**

### **28 Community service obligations**

- (1) The community service obligations of a Government owned corporation are the activities of the corporation that the board of the corporation establishes, to the satisfaction of the portfolio Minister, are activities that:
- (a) have an identifiable community or social benefit; and
  - (b) would not be undertaken if only commercial considerations applied.
- (2) The portfolio Minister, the shareholding Minister and a Government owned corporation may together agree that the corporation is to undertake a community service obligation.
- (3) A Government owned corporation must not undertake a community service obligation except:
- (a) with the agreement of the portfolio Minister and the shareholding Minister under subsection (2); or
  - (b) in accordance with a direction under subsection (4).
- (4) The portfolio Minister, with the agreement of the shareholding Minister, may direct a Government owned corporation to undertake, or not to undertake, a community service obligation.

- (5) The portfolio Minister, with the agreement of the shareholding Minister, is to ensure that appropriate financial arrangements are made to enable the corporation to undertake a community service obligation that it may undertake under this section.
- (6) If the shareholding Minister of the corporation is not the Treasurer, the shareholding Minister must consult with the Treasurer before entering into an agreement under this section.
- (7) The portfolio Minister must table in the Legislative Assembly a copy of a direction under subsection (4) within 6 sitting days after the direction was given.
- (8) If:
  - (a) money is allocated under the *Financial Management Act* to a statutory corporation for a matter that is specified to be a community service obligation in the budget papers tabled in the Legislative Assembly for a financial year; and
  - (b) in that financial year the corporation becomes a Government owned corporation,

the obligation is to be taken to be a community service obligation of the Government owned corporation to which the portfolio Minister and the shareholding Minister have agreed under this section.

## **29 Portfolio Minister may notify board of public sector policies**

- (1) The portfolio Minister may, in writing, notify the board of a Government owned corporation of a public sector policy that is to apply to the corporation.
- (2) A notice under subsection (1) may only be given:
  - (a) if the portfolio Minister is satisfied that it is in the public interest to do so;
  - (b) with the approval of the shareholding Minister;
  - (c) if the portfolio Minister has consulted the board; and
  - (d) if the portfolio Minister has requested the board to advise the portfolio Minister whether, in its opinion, complying with the policy specified in the notice would not be in the best interests of the Government owned corporation.
- (3) The board of a Government owned corporation must ensure that a policy specified in a notice under subsection (1) to the board is carried out in relation to the corporation.

- (4) The portfolio Minister must table in the Legislative Assembly a copy of a notice under subsection (1) within 6 sitting days after the notice was given.

**30 Portfolio Minister may give directions in public interest**

- (1) The portfolio Minister may give the board of a Government owned corporation a direction in writing in relation to the Government owned corporation.
- (2) A direction under subsection (1) may only be given:
- (a) if the portfolio Minister is satisfied that it is in the public interest to do so;
  - (b) with the approval of the shareholding Minister;
  - (c) if the portfolio Minister has consulted the board; and
  - (d) if the portfolio Minister has requested the board to advise the portfolio Minister whether, in its opinion, complying with the direction would not be in the best interests of the Government owned corporation.
- (3) The board of the Government owned corporation must ensure that a direction given to it in a notice under subsection (1) is carried out in relation to the Government owned corporation.
- (4) The portfolio Minister must table in the Legislative Assembly a copy of a notice under subsection (1) within 6 sitting days after the notice was given.

**Division 4 Financial matters**

**31 Dividends**

- (1) The board of a Government owned corporation is to declare the amount of a dividend on the shares of a Government owned corporation.
- (2) The shareholding Minister may direct the board of a Government owned corporation to declare a special dividend on the shares of the corporation.
- (3) A dividend declared under subsection (1) or (2) is to be paid into the Central Holding Authority.

- (4) The shareholding Minister may, before the annual financial statements are finalised, discuss the dividend to be declared under subsection (1) with the board of the Government owned corporation.
- (5) The board of the Government owned corporation must make a recommendation to the shareholding Minister as to the amount to be paid as a dividend.
- (6) The shareholding Minister may:
  - (a) accept the recommendation of the board made under subsection (5); or
  - (b) issue a direction specifying that a different amount to that recommended by the board is to be declared as a dividend.
- (7) The shareholding Minister must table in the Legislative Assembly a copy of a direction under subsection (2) or (6)(b) within 6 sitting days after the date on which the direction was given.
- (8) Dividends must be paid:
  - (a) within 60 days after the audited annual financial statements are completed in each year; or
  - (b) by 1 December in each year,whichever is earlier.

## **32 Capital structure**

- (1) The shareholding Minister may determine or alter the capital structure of a Government owned corporation.
- (2) Before determining or altering the capital structure of a Government owned corporation, the shareholding Minister must:
  - (a) consult with the board of the corporation;
  - (b) if the shareholding Minister of the corporation is not the Treasurer – consult with the Treasurer; and
  - (c) request the board to advise the shareholding Minister whether it is of the opinion that the proposed capital structure would not be in the best interests of the corporation or any of its subsidiaries.

- (3) The board of a Government owned corporation may make a recommendation to the shareholding Minister as to the capital structure, including by converting debt to equity, converting equity to debt, repaying equity, transferring assets and altering the equity base.

### **33 Tax**

- (1) A Government owned corporation, and a wholly owned subsidiary of a Government owned corporation, must pay to the Central Holding Authority for each financial year an amount that is equal to the amount the corporation or subsidiary would have been liable to pay for the financial year as income tax under a law of the Commonwealth if the corporation or subsidiary were not exempt from the requirement to do so.
- (2) A Government owned corporation that is exempt from the requirement to pay an amount to a council under the *Local Government Act* must pay to the Central Holding Authority for each financial year an amount that is equal to the amount the corporation would have been liable to pay to a council under the *Local Government Act* in the financial year if the corporation were not exempt from the requirement to do so.
- (3) In calculating an amount of tax referred to in subsection (1) or (2), and in paying the amount, the Government owned corporation or subsidiary must comply and act in accordance with the Tax Equivalents Regimes Manual issued by the Treasurer as amended from time to time.
- (4) A Government owned corporation is not, merely because it may come under the shield of the Crown or is representing the Crown in accordance with an agreement under section 5(1)(b), exempt from any rate, tax, duty or other impost imposed by or under any law of the Territory.

### **34 Government guarantee**

- (1) Except as provided for in this section and despite the provisions of any other Act (including section 20 of the *Northern Territory Treasury Corporation Act*), the obligations of a Government owned corporation or any of its subsidiaries are not guaranteed by the Territory.
- (2) The Treasurer may agree that the Territory is to guarantee a Government owned corporation:
  - (a) if the Government owned corporation is required to undertake an activity outside its normal commercial functions; or

- (b) to the extent that the board of the corporation and the Treasurer agree in writing.
- (3) The Treasurer must table in the Legislative Assembly a copy of a guarantee to which the Treasurer has agreed under this section within 6 sitting days after the date the guarantee was entered into.

### **35 Borrowings**

- (1) A Government owned corporation may only borrow money (other than from the Northern Territory Treasury Corporation) with the approval of the shareholding Minister under subsection (2).
- (2) The shareholding Minister may approve the borrowing of an amount of money by a Government owned corporation.
- (3) If a Government owned corporation borrows money other than from the Northern Territory Treasury Corporation and the Treasurer is of the opinion that a similar corporation that was not a Government owned corporation would have paid a higher interest rate for the borrowing, the corporation must from time to time pay to the Treasurer for payment into the Central Holding Authority a competitive neutrality fee.
- (4) The competitive neutrality fee:
  - (a) is to be determined by the Treasurer having regard to the difference between the interest rate that the Government owned corporation is liable to pay for the borrowing and the interest rate that, in the opinion of the Treasurer, a similar corporation that was not a Government owned corporation would have paid for the borrowing; and
  - (b) may be expressed as a percentage interest rate on the borrowing.

### **36 Procurement**

- (1) A Government owned corporation must develop a procurement policy.
- (2) The procurement policy of a Government owned corporation must be consistent with the principles of the Territory's procurement policy.
- (3) The procurement policy of a Government owned corporation must be approved by the portfolio Minister.
- (4) The portfolio Minister may approve the procurement policy of a Government owned corporation.

- (5) A Government owned corporation must comply with the procurement policy approved under subsection (4) for the corporation.
- (6) Until a Government owned corporation's procurement policy is approved under subsection (4), the *Procurement Act* applies to the corporation as if it were an Agency.

### **37 Investments by Government owned corporations**

- (1) A Government owned corporation must not undertake a capital investment above the relevant prescribed threshold unless it is approved by the shareholding Minister.
- (2) A Government owned corporation must not acquire a financial investment above the relevant prescribed threshold unless it is approved by the shareholding Minister.
- (3) For the purposes of subsections (1) and (2), the relevant prescribed threshold is:
  - (a) the threshold agreed by the board of the Government owned corporation and the shareholding Minister; or
  - (b) if a threshold is not agreed under paragraph (a) – the threshold determined by the shareholding Minister,for a capital investment or financial matter of the type to which the threshold relates.
- (4) A Government owned corporation must not:
  - (a) form or acquire a subsidiary, a trust, joint venture or other similar arrangement involving a third party; or
  - (b) undertake a capital or financial investment outside the Territory,unless:
  - (c) the formation, acquisition or undertaking is approved by the shareholding Minister; or
  - (d) otherwise agreed between the shareholding Minister and the board of the Government owned corporation.
- (5) An approval given by the shareholding Minister under subsection (4) may be given on the conditions the shareholding Minister thinks fit.

- (6) If the shareholding Minister of the corporation is not the Treasurer, the shareholding Minister must consult with the Treasurer before giving an approval under this section.

**38            Disposal of investments**

- (1) A Government owned corporation must not dispose of a capital or financial investment above the prescribed threshold unless the disposal is approved by the shareholding Minister.
- (2) For the purposes of subsection (1), the prescribed threshold is:
- (a) the threshold agreed by the board of the Government owned corporation and the shareholding Minister; or
  - (b) if the threshold is not agreed under paragraph (a) – the threshold determined by the shareholding Minister.
- (3) If the shareholding Minister of the corporation is not the Treasurer, the shareholding Minister must consult with the Treasurer before giving an approval under this section.

**Part 4            Accountability**

**Division 1        Statements of corporate intent**

**39            Statement of corporate intent – timetable and procedure**

- (1) The board of a Government owned corporation must prepare and submit to the shareholding Minister a draft written statement of corporate intent.
- (2) The board must:
- (a) consult in good faith with the shareholding Minister;
  - (b) make the changes to the draft statement that are agreed between the shareholding Minister and the board; and
  - (c) deliver the completed written statement to the shareholding Minister (incorporating the changes, if any, made under paragraph (b)) not later than one month before the commencement of the financial year to which the statement relates or by a date agreed between the board and shareholding Minister.
- (3) The statement may be modified at any time by the board with the agreement of the shareholding Minister.



- (4) The shareholding Minister may, from time to time, by written notice to the board, direct the board to include in, or delete from, a statement of corporate intent any matters specified in the direction.
- (5) Before giving a direction under this section, the shareholding Minister is to consult with the board of the Government owned corporation as to the matters to be referred to in the notice.
- (6) The Government owned corporation must comply with a direction given under this section.
- (7) The shareholding Minister must table in the Legislative Assembly a copy of:
  - (a) the completed statement of corporate intent for a Government owned corporation, or a modification of the statement – within 6 sitting days after the commencement of the financial year to which the statement relates or after the date agreed between the board and shareholding Minister under subsection (2)(c);  
or
  - (b) a direction under this section – within 6 sitting days after the date the shareholding Minister gave the direction.
- (8) Before a copy of a document is tabled in the Legislative Assembly under this section, the shareholding Minister may delete from the document information that is of a commercially sensitive nature.
- (9) A document referred to in this section may not, before it is tabled in the Legislative Assembly, be published or made available to the public without the approval of the board and the shareholding Minister.

#### **40            Statement of corporate intent – contents**

A statement of corporate intent must specify for the Government owned corporation, in respect of the financial year to which it relates and each of the 2 following financial years, the following information:

- (a) the objectives of the corporation;
- (b) the nature and scope of the activities to be undertaken by the corporation;
- (c) the material risks faced by the corporation;
- (d) the strategies to minimise the material risks faced by the corporation;

- (e) the strategies to improve the financial performance of the corporation;
- (f) the capital investment plans of the corporation that have been approved by the shareholding Minister;
- (g) the financial targets and other measures by which the performance of the corporation may be judged;
- (h) the accounting policies to be applied in the accounts of the corporation;
- (i) any other matters that may be agreed on by the shareholding Minister and the board of the corporation.

#### **41            Statement of corporate intent – reporting**

- (1) A Government owned corporation must, within 3 months after the end of each financial year or another period that is specified by the shareholding Minister, give to the shareholding Minister and the portfolio Minister a report on the corporation's performance in relation to its statement of corporate intent.
- (2) A report under subsection (1) is to:
  - (a) identify any significant departures from the statement of corporate intent for the financial year to which the report relates; and
  - (b) set out the reasons for each of the departures.
- (3) If a report under this section is not included in the annual report under section 44, the shareholding Minister must table in the Legislative Assembly a copy of the report under this section within 6 sitting days after the date the shareholding Minister receives the report.
- (4) Before a copy of a report is tabled in the Legislative Assembly under this section, the shareholding Minister may delete from the report information that is of a commercially sensitive nature.

### **Division 2            Audit, reporting and provision of information**

#### **42            Corporation to provide financial statements to Auditor-General**

- (1) A Government owned corporation must forward to the Auditor-General the financial statements that are to be included in an annual report prepared under section 44(1).

- (2) The Government owned corporation must forward the financial statements to the Auditor-General within 2 months after the end of each financial year or of another period that is specified by the shareholding Minister.

**43            Auditor-General to audit financial statements etc.**

- (1) The Auditor-General must:
  - (a) audit the financial statements forwarded to him or her under section 42(1) within one month after receiving them or within another period determined by the Administrator; and
  - (b) report on the financial statements to the board of the Government owned corporation.
- (2) The Auditor-General may determine the fee payable for an audit under this section after consultation with the Government owned corporation to which the report relates.
- (3) A Government owned corporation must pay in accordance with a direction of the Auditor-General the fee determined under subsection (2).
- (4) A reference in this section to the Auditor-General includes a reference to a person carrying out functions under this section for the Auditor-General.

**44            Annual reports and accounts**

- (1) A Government owned corporation must prepare an annual report of the operations of the corporation and of its subsidiaries during each financial year.
- (2) The annual report under subsection (1) is to include:
  - (a) financial statements for that financial year that comply with the requirements of the Corporations Act 2001 and, if the corporation has subsidiaries, the requirements of that Act relating to consolidated financial statements;
  - (b) the Auditor-General's report provided to the corporation under section 43; and
  - (c) all information that is required by the shareholding Minister to enable an informed assessment of the operations of the corporation and its subsidiaries.
- (3) A report under subsection (1) must conform to the requirements of similar reports under the Corporations Act 2001.

- (4) A Government owned corporation must forward the annual report under subsection (1) to the shareholding Minister as soon as practicable after the Auditor-General provides his or her report to the Government owned corporation under section 43 and in any case:
  - (a) within 3 months after the end of each financial year; or
  - (b) within another period that is specified by the shareholding Minister.
- (5) The shareholding Minister must table in the Legislative Assembly a copy of an annual report of a Government owned corporation within 6 sitting days after the report is delivered to the shareholding Minister.

#### **45 Auditor-General to conduct audits**

- (1) The Auditor-General may conduct under the *Audit Act* an audit of a Government owned corporation.
- (2) Sections 16 and 21 of the *Audit Act* apply in relation to a Government owned corporation as if a reference in those sections to **Accountable Officer** and **Agency** were a reference to **the Board of a Government owned corporation** and **Government owned corporation** respectively.

#### **46 Special audits**

- (1) The shareholding Minister may request the Auditor-General to carry out an audit within the time specified in the request or within the further time that is reasonably necessary to enable the audit to be completed.
- (2) A request under subsection (1) is to be in writing and may be given either generally or in relation to a specific matter.
- (3) The Auditor-General is to advise the shareholding Minister in writing, within 14 days after receiving a request under subsection (1), whether or not the Auditor-General agrees to carry out the request.
- (4) If the Auditor-General has advised the shareholding Minister under subsection (3) that the Auditor-General agrees to carry out the requested audit, the Auditor-General is to provide a written report in relation to the audit.
- (5) The shareholding Minister may request an auditor to carry out an audit, either generally or in respect of a specific matter, in relation to a Government owned corporation.

- (6) In this section:

**audit** includes the inspection, investigation, examination or review of accounts, performance or systems.

#### **47 Other information to be provided**

- (1) The board of a Government owned corporation must provide to the shareholding Minister information relating to the affairs of the corporation or any of its subsidiaries that he or she requests the corporation to provide.
- (2) The board of a Government owned corporation must provide to the portfolio Minister information that he or she requests relating to the affairs of the Government owned corporation or any of its subsidiaries.
- (3) Information is to be provided under subsection (1) or (2) whether or not the information is of a kind referred to in the statement of corporate intent.
- (4) A Government owned corporation must provide to the Territory information in relation to the corporation or its subsidiaries if the information is required by the Territory to enable it to provide the information to a body of the Commonwealth for the purpose of the collection of national data.

## **Part 5 Legal capacity and powers of Government owned corporations**

### **48 Interpretation**

- (1) In this Part, unless the contrary intention appears:

**officer** includes a person authorised by the board of a Government owned corporation.

**restriction** includes prohibition.

- (2) In this Part, unless the contrary intention appears:

- (a) the doing of an act by a Government owned corporation includes a reference to the making of an agreement by the Government owned corporation and a reference to a transfer of property to or by the Government owned corporation; and
- (b) a reference to power includes a reference to legal capacity.

**49 Objects of Part**

- (1) The objects of this Part include:
  - (a) providing that the doctrine of ultra vires does not apply to Government owned corporations; and
  - (b) ensuring that Government owned corporations give effect to any restrictions on their objects or powers but without affecting the validity of their dealings with outsiders.
- (2) This Part is to be construed and have effect in accordance with the objects specified in subsection (1).

**50 General powers of Government owned corporations**

- (1) A Government owned corporation is a body corporate with perpetual succession.
- (2) A Government owned corporation has, for or in connection with the performance of its functions, all the powers of a natural person including the power:
  - (a) to enter into contracts;
  - (b) to acquire, hold, dispose of and deal with property;
  - (c) to sue and be sued;
  - (d) to appoint agents and attorneys;
  - (e) to charge, and fix terms, for goods, services and information supplied by it;
  - (f) to engage consultants; and
  - (g) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting subsection (2), a Government owned corporation has the powers that are conferred on it by or under this or another Act.
- (4) A Government owned corporation may exercise its powers within or outside the Territory.
- (5) Without limiting subsection (4), a Government owned corporation may exercise its powers outside Australia.
- (6) A Government owned corporation is to have a common seal.

**51 Restrictions on Government owned corporations**

- (1) Section 50 has effect in relation to a Government owned corporation subject to any restrictions on the Government owned corporation's powers expressly imposed by or under this or another Act.
- (2) Section 50 also has effect in relation to the Government owned corporation subject to any restrictions expressly imposed by:
  - (a) the Government owned corporation's constitution;
  - (b) a relevant statement of corporate intent of the Government owned corporation; and
  - (c) a relevant direction, notification or approval given to the Government owned corporation by the Government owned corporation's shareholding Minister or portfolio Minister.
- (3) If:
  - (a) the Government owned corporation exercises a power contrary to a restriction referred to in subsection (1) or (2); or
  - (b) the Act by which the Government owned corporation is incorporated sets out the objects or functions of the corporation and the corporation does an act otherwise than in accordance with the objects or functions,the corporation contravenes this subsection.
- (4) The exercise of the power mentioned in subsection (3)(a) or the act mentioned in subsection (3)(b) is not invalid merely because of the contravention.
- (5) An officer of the Government owned corporation who is involved in the contravention contravenes this subsection.
- (6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).
- (7) The Government owned corporation or officer of the Government owned corporation is not guilty of an offence merely because of the relevant contravention.

(8) The fact that:

- (a) by exercising the powers mentioned in subsection (3)(a) or doing the act as mentioned in subsection (3)(b) the Government owned corporation contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of the Government owned corporation contravened or would contravene subsection (5),

may be asserted or relied on only in proceedings between the shareholding Minister or the Territory and officers of the Government owned corporation.

## **52 Assumptions that may be made in dealings with Government owned corporations or property**

(1) A person who enters into a transaction with a Government owned corporation is entitled to assume that the corporation:

- (a) has power to enter into the transaction and is entering into the transaction in the performance of its statutory functions;
- (b) has obtained all approvals required under this Act or the Act by or under which it was established or continued in existence to enable it to enter the transaction;
- (c) in entering into the transaction, has complied with its constitution, this Act and the Act by or under which it was established or continued in existence; and
- (d) has properly sealed a document if:
  - (i) it bears what appears to be an imprint of the corporation's seal; and
  - (ii) the sealing of the document appears to be authenticated by a director of the corporation or the chief executive officer of the corporation.

(2) Subsection (1) does not apply if, at the time the transaction is entered into, the person has:

- (a) actual knowledge to the contrary of a matter he or she is entitled to assume under subsection (1); or
- (b) a connection or relationship with the Government owned corporation of a kind that the person ought to know that the contrary of a matter he or she is entitled to assume under subsection (1) is the case.



- (3) If a person is entitled to make an assumption under subsection (1) at the time he or she enters into a transaction with a Government owned corporation, the corporation may not assert, after the transaction has been entered into, that the assumption does not apply or that the transaction is not binding on the corporation.

### **53 Fraud does not necessarily invalidate assumptions**

- (1) A person's entitlement under this Part to make an assumption is not affected merely by the fact that a person:
- (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates; or
  - (b) has forged a document that appears to have been sealed on behalf of a Government owned corporation.
- (2) Despite subsection (1), the person is not entitled to make an assumption under subsection (1) if the person has actual knowledge of that fraudulent action or forgery.

## **Part 6 Miscellaneous**

### **54 Service of notices**

A notice, summons, writ or other proceeding required to be served on a Government owned corporation may be served by:

- (a) leaving the document at the head office of the corporation, or, if it is a notice, leaving the document at, or posting the notice to, an office of the corporation; or
- (b) delivering a copy of the document personally to a director of the corporation who resides in the Territory.

### **55 Transitional matters relating to Crown immunity**

- (1) If a contract is entered into by a statutory corporation, or a subsidiary of a statutory corporation, before the corporation becomes a Government owned corporation:
- (a) the Government owned corporation and its subsidiaries are within the shield of the Crown and represent the Territory; and
  - (b) the Territory is liable for the debts, liabilities and obligations of the corporation and its subsidiaries,

in relation to:

- (c) the contract or a variation of the contract after the corporation became a Government owned corporation; and
- (d) any act performed, or not performed, under the contract or the variation, or to give effect to the contract or the variation, after the corporation became a Government owned corporation,

to the same extent as would be the case had the Government owned corporation not become a Government owned corporation.

(2) If legal proceedings are at any time instituted by or against:

- (a) a Government owned corporation or a subsidiary of a Government owned corporation; or
- (b) a statutory corporation, or a subsidiary of a statutory corporation, that becomes a Government owned corporation before the conclusion of the proceedings,

in relation to an act performed or not performed by the corporation or subsidiary or any other person before the corporation became a Government owned corporation then:

- (c) the Government owned corporation and the subsidiary are within the shield of the Crown and represent the Territory in relation to the proceedings; and
- (d) the Territory is liable for the debts, liabilities or obligations of the corporation and subsidiary in relation to the proceedings,

to the same extent as would be the case had the Government owned corporation not become a Government owned corporation.

## **56 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<b>Gaz = Gazette</b>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

**2****LIST OF LEGISLATION*****Government Owned Corporations Act 2001 (Act No. 69, 2001)***

Assent date	21 December 2001
Commenced	21 December 2001

***Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006 (Act No. 7, 2006)***

Assent date	26 April 2006
Commenced	26 April 2006

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

**3****LIST OF AMENDMENTS**

s 24	amd No. 7, 2006, s 30
s 31	amd No. 4, 2007, s 7
s 33	amd No. 4, 2007, s 7
s 35	amd No. 4, 2007, s 7