

NORTHERN TERRITORY OF AUSTRALIA
AYERS ROCK RESORT CORPORATION ACT 1992

No. 3 of 1992

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NORTHERN TERRITORY OF AUSTRALIA

No. 3 of 1992

AN ACT

to establish the Ayers Rock Resort Corporation,
and for related purposes

[Assented to 6 April 1992]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Ayers Rock Resort Corporation Act 1992*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

In this Act, unless the contrary intention appears -

"Corporation" means the Ayers Rock Resort Corporation established by section 4;

"Chairman" means the Chairman of the Corporation;

"member" means a member of the Corporation and includes -

- (a) the Chairman; and
 - (b) a person appointed under section 10 to act as a member, while the person is so acting;
-

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"Resort Investment" includes, as the case requires, the moneys invested by the Corporation for the purposes of this Act and a corporation in which they are invested;

"Yulara" has the same meaning as in the *Yulara Tourist Village Management Act*.

PART II - AYERS ROCK RESORT CORPORATION

4. ESTABLISHMENT OF CORPORATION

(1) There is established by this Act a Corporation by the name of the Ayers Rock Resort Corporation.

(2) The Corporation -

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall assume that it was duly affixed.

(4) For the purposes of the *Remuneration (Statutory Bodies) Act*, the Corporation shall be deemed to have been established for a public purpose.

5. COMPOSITION OF CORPORATION

(1) The Corporation shall consist of not less than 4 nor more than 6 members appointed by the Minister by notice in the *Gazette*.

(2) The exercise of a power or the performance of a function by the Corporation is not affected by reason only of there being a vacancy in the membership of the Corporation.

6. PERIOD OF APPOINTMENT

(1) Subject to this Act, a member holds office until the expiration of such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) Where a period of appointment is not specified in the instrument of appointment of a member, the member holds office, subject to this Act, for 3 years.

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7. CHAIRMAN

The Minister shall appoint a person who is, or is to be, a member to be the Chairman of the Corporation.

8. RESIGNATION OF MEMBERS

A member may resign office by writing signed by him or her and delivered to the Minister.

9. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member -

(a) is absent, except by leave of the Corporation, from 3 consecutive meetings of the Corporation; or

(b) 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,

the Minister shall terminate the appointment of the member.

10. ACTING APPOINTMENT

(1) Where a member is or is expected to be absent from duty or from the Territory, the Minister may appoint a person to act as the member during the absence.

(2) The Minister may, at any time, terminate an appointment made under subsection (1).

(3) The validity of a decision of the Corporation shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person under subsection (1) had not arisen or that an appointment under subsection (1) had ceased to have effect.

11. DISCLOSURE OF INTEREST

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and

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of which he or she is not a director shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest at a meeting of the Corporation.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Corporation and, unless the Corporation otherwise determines, the member -

(a) shall not, while he or she has that interest, take part after the disclosure in any deliberation or decision of; and

(b) shall be disregarded for the purpose of constituting a quorum of,

the Corporation in relation to the matter.

(3) For the purpose of the making of a determination under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not -

(a) be present during the deliberations of the Corporation for the purpose of making the determination; or

(b) take part in the making by the Corporation of the determination.

12. MEETINGS OF CORPORATION

(1) The Chairman shall call such meetings of the Corporation as are necessary for the exercise of its powers and the performance of its functions.

(2) The Minister may, at any time, direct the Chairman to convene a meeting of the Corporation and the Chairman shall convene a meeting in accordance with the direction.

(3) At a meeting of the Corporation -

(a) 3 members constitute a quorum;

(b) the Chairman, if present, shall preside but in the absence of the Chairman the members present shall elect one of their number to act as Chairman and that person may exercise the powers and shall perform the functions of the Chairman for the meeting;

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- (c) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the Chairman or other member presiding at the meeting shall have, in addition to his or her deliberative vote, a casting vote; and
- (d) subject to this Act, the Corporation shall determine the procedure to be followed at or in connection with the meeting.

(4) The Corporation shall cause records of its meetings to be kept.

13. PROTECTION OF MEMBERS

Subject to section 30, no action or proceeding, civil or criminal, shall lie against the Chairman or another member for or in respect of an act or thing done or omitted to be done in good faith by that person in his or her capacity as Chairman or member.

14. DELEGATION BY CORPORATION

(1) The Corporation may, by instrument under its seal, delegate to a member, to a committee of the Corporation consisting of 2 or more members, or to an officer of the Corporation, any of its powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Corporation.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Corporation.

PART III - FUNCTIONS AND POWERS OF CORPORATION

15. FUNCTIONS OF CORPORATION

The functions of the Corporation are -

- (a) to acquire and hold such interests (including interests in real and personal property, shares and interest in partnerships) as it considers necessary to ensure the profitable operation of an integrated tourist resort at Yulara;

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- (b) to ensure, to the extent possible, that -
 - (i) the assets of the Resort Investment are employed in a commercial manner so as to maximise the profitability of the enterprise in which they are engaged;
 - (ii) a sound consolidated capital structure is maintained; and
 - (iii) the enterprise is conducted in accordance with sound commercial practice;
- (c) to the extent that the Resort Investments permit such control, appoint or approve the appointment of directors and other officers of companies comprised in the Resort Investments and, as far as possible, ensure that they are appropriately qualified given the nature of the business of the Resort Investment and the objectives of the Corporation; and
- (d) as far as possible ensure that a commercial rate of return is earned on the Corporation's investments,

and such other functions as are imposed on it by or under this or any other Act.

16. POWERS OF CORPORATION

(1) Subject to this Act, the Corporation has power to do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions.

(2) Without limiting the generality of subsection (1), the Corporation may, for the purposes of carrying out its functions or exercising its powers, including the powers conferred on it elsewhere in this Act -

- (a) enter into contracts;
- (b) acquire, hold and dispose of real or personal property, rights, privileges, permits, licences and authorities;
- (c) form, or participate in the formation of, a company;
- (d) subscribe for or otherwise acquire, and dispose of, shares in, or debentures or other securities of, a company;

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- (e) enter into a partnership or an arrangement for sharing of profits;
- (f) give guarantees and indemnities;
- (g) improve real property owned by or under the control of the Corporation;
- (h) appoint receivers, agents and attorneys;
- (j) act as trustee;
- (k) act as agent;
- (m) receive grants of money from the Territory;
- (n) borrow money, or raise money otherwise than by borrowing (including from outside of the Territory or Australia), in any manner that accords with sound current commercial practice;
- (p) lend money;
- (q) draw, make, accept, indorse and discount bills of exchange and promissory notes;
- (r) pay dividends on capital at such rates and times as it determines; and
- (s) do such other things as are incidental to any of its powers.

17. MINISTERIAL CONTROL

(1) The Corporation, in the exercising of its powers and the performance of its functions, is subject to the written lawful directions of the Minister.

(2) For the purposes of subsection (1) but without limiting the generality of the words "lawful directions", a direction is not lawful if compliance with it would necessarily result in a breach by the Corporation or a Resort Investment of a legally enforceable contract or agreement or of a commercial undertaking.

(3) Where a direction of the Minister requires the Corporation to take an action or disclose information (or to have a corporation over which it has the necessary control take an action or discloses information) that, in the opinion of the Corporation, for good commercial reasons, should not be taken or be disclosed, the Corporation shall, in writing, advise the Minister of its objection and the reasons for its objection.

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(4) If after receiving the Corporation's objections the Minister, in writing, confirms his or her direction to the Corporation, the Minister shall give his or her reasons for so doing and the Corporation shall comply with the direction.

(5) The Minister shall cause a copy of each direction given by the Minister to the Corporation (and all objections and reasons under subsection (3) and confirmations and reasons under subsection (4)) to be tabled in the Legislative Assembly within 3 sitting days of the Assembly after it or they are given or made.

18. CORPORATION TO PREPARE CORPORATE PLAN

(1) Before the commencement of each financial year, the Corporation shall prepare a corporate plan, in a form approved by the Minister, for the ensuing period of 3 financial years.

(2) A plan prepared under subsection (1) shall set out the objectives of the Corporation for the period and include an outline of the means by which it proposes to achieve the objectives.

(3) For the purposes of subsection (2), the objectives of the Corporation shall include financial targets and estimates (including revenues, costs, profitability and gearing), plans for the acquisition or disposal of assets (including intended sales of any part of the Resort Investments) and such other information, if any, as is prescribed.

(4) As soon as practicable after it is prepared but in any case before the commencement of the financial year, the Corporation shall, subject to section 19(2), give a copy of the corporate plan to the Minister.

19. CERTAIN INFORMATION TO BE PROVIDED TO MINISTER

(1) Subject to subsection (2), the Corporation shall provide to the Minister, as soon as practicable after it receives them, copies of all notices, advice and accounts provided to the Corporation in its capacity as shareholder of or investor in the Resort Investment.

(2) Where in the opinion of the Corporation a notice, advice or account received by it, or a part of a corporate plan prepared in pursuance of section 18, contains commercially sensitive information that ought not be disclosed, it may advise the Minister of its receipt of the document or the existence of the part of the corporate plan and shall not provide a copy to the Minister unless directed under section 17 to do so.

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PART IV - FINANCE OF CORPORATION

20. MONEYS OF CORPORATION

The moneys of the Corporation consist of -

- (a) such moneys as are appropriated for its purposes;
- (b) dividends on shares owned by the Corporation;
- (c) interest on investments of moneys of the Corporation;
- (d) proceeds of the sale or other disposition of property and investments of the Corporation; and
- (e) such other amounts as, from time to time, become available for the use of the Corporation under this or any other Act.

21. APPLICATION OF MONEYS

The moneys of the Corporation shall be applied only in payment or discharge of the expenses and other obligations (including the payment of dividends) of the Corporation, whether contractually incurred or imposed by or under a law in force in the Territory.

22. BANK ACCOUNTS

The Corporation shall open and maintain in the Territory an account or accounts with a bank or banks.

23. PROPER ACCOUNTS TO BE KEPT

The Corporation shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of the moneys of or held by the Corporation are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities.

24. BORROWINGS

(1) Without limiting the generality of section 16(2)(n), the Corporation may, under that section, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(2) A borrowing of money, or a raising of money otherwise than by borrowing, in pursuance of section 16(2)(n) may be made, in whole or in part, in a currency other than Australian currency.

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(3) In this section "securities" includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(4) A reference in this section to dealing with securities includes a reference to -

- (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

(5) For the purposes of this section -

(a) the issue by the Corporation of an instrument acknowledging a debt in consideration of -

(i) the payment or deposit of money; or

(ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

(b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

25. BORROWINGS OF CORPORATION, &c., NOT GUARANTEED BY TERRITORY

Notwithstanding anything in this or any other Act or law in force in the Territory, the Corporation, a Resort Investment or any other person is not capable of entering into a contract or other arrangement whereby the Territory or an authority of the Territory guarantees borrowings, or the raising of money otherwise than by borrowing, of the Corporation or a Resort Investment or gives an indemnity relating to such borrowings or raising of money, neither -

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- (a) is a person capable of accepting such a guarantee or indemnity or of lawfully accepting any payment or other benefit in pursuance of such a purported guarantee or indemnity; or
- (b) shall such a guarantee or indemnity arise or be implied by operation of law.

26. APPOINTMENT AND POWER OF AUDITOR

(1) In this section and section 31 "auditor" means -

- (a) a registered company auditor within the meaning of the Corporations Law (including a firm of auditors one of the partners of which is so registered) appointed by the Corporation; or
- (b) if the Minister so directs under section 17(1), the Auditor-General.

(2) The requirements of this section are in addition to the requirements under section 30 but to the extent, if any, that the requirements of this section and under section 30 are not capable of standing together, the requirements of this section prevail.

(3) The Corporation shall, not later than 7 days after 30 June in each year, appoint an auditor for the Corporation and shall, within 28 days after so doing, notify the Minister of the name of the auditor.

(4) The auditor shall inspect, audit and report on the accounts and records of financial transactions of the Corporation and the records relating to assets of, or in the custody of, the Corporation and shall forthwith draw the attention of the Corporation and the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the auditor, is of sufficient importance to justify the auditor so doing.

(5) The auditor, or a person authorised by the auditor, is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or to the acquisition, receipt, custody or disposal of assets by it.

(6) The auditor, or a person authorised by the auditor, may make copies of or take extracts from any such accounts, records, documents or papers.

(7) The auditor, or a person authorised by the auditor, may require a person to furnish to him or her such information in the possession of the person or to which the person has access as the auditor or authorised

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person considers necessary for the purposes of the functions of the auditor under this Act, and the person shall comply with the requirement.

Penalty: \$2,000.

(8) Where the Auditor-General is the auditor for the purposes of this Act, the Auditor-General shall not report on the affairs of the Corporation except as provided by or under this Act.

(9) In addition to the powers expressly given under this Act to the auditor, the auditor has such powers in relation to the audit of the accounts and records referred to in subsection (4) as a registered company auditor has in relation to a corporation under the Corporations Law and that Law, with the necessary changes, shall apply to the extent necessary to enforce those powers.

27. CORPORATION TO PAY TERRITORY TAXES, &c.

Nothing in this or any other Act relieves the Corporation from the liability to pay Territory taxes, rates and duties in respect of its business and activities that it would have if it were a company incorporated under the Corporations Law and in addition the Minister may, by notice in writing to the Corporation, require it to pay to the Consolidated Fund, within the time and in respect of the period specified in the notice, such amount as the Minister considers would have been the liability of the Corporation to pay income tax under the *Income Tax Assessment Act 1936* of the Commonwealth had its income not been exempted from income tax by that Act.

PART V - MISCELLANEOUS

28. STAFF

(1) The Corporation may appoint such officers and engage such employees as it thinks necessary for the purposes of this Act.

(2) The terms and conditions of employment of persons appointed or engaged under subsection (1) shall be as determined by the Corporation.

(3) The *Public Service Act* does not apply to or in relation to the employment of officers or employees of the Corporation.

29. CONSULTANTS MAY BE ENGAGED

The Corporation may engage consultants.

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30. APPLICATION OF CORPORATIONS LAW

(1) Subject to subsection (2) and section 26(9), except to the extent that the Corporations Law expressly binds the Crown, that Law does not apply to or in relation to the Corporation.

(2) The accounting and reporting obligations imposed and standards required by the Corporations Law of or in relation to a public company incorporated under the Corporations Law apply to and in relation to the Corporation as if -

- (a) the Corporation were a public company so incorporated; and
- (b) the Territory were the shareholders of the company,

and the Corporations Law, with the necessary changes, shall apply to the extent necessary to enforce those standards.

31. ANNUAL REPORT

(1) In addition to the information required under section 30 to be included in the annual report of the Corporation, the report shall include a copy of all directions, objections, confirmations and reasons given under section 17 during the period to which the report relates.

(2) The Minister shall cause the report and financial statements of the Corporation, together with the report of the auditor, to be laid before the Legislative Assembly within 6 sitting days of the Assembly after they are received by the Minister.

32. 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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