

Serial 155
Land Development Corporation Bill 2003
Mr Vatskalis

**A BILL
for
AN ACT**

to establish a statutory corporation to develop and manage land for use by
new and existing industries in the Territory and associated activities,
and for related purposes



NORTHERN TERRITORY OF AUSTRALIA
LAND DEVELOPMENT CORPORATION ACT 2003

No. of 2003

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 – LAND DEVELOPMENT CORPORATION

4. Establishment of Corporation
5. Composition of Corporation
6. Functions of Corporation
7. Powers of Corporation
8. Minister may give Corporation directions
9. Corporation to take commercial approach
10. Corporation an Agency
11. Corporation excluded matter under Corporations Act 2001
12. Delegation

PART 3 – ADVISORY BOARD

Division 1 – Establishment and membership of Board

13. Establishment of Advisory Board
14. Function of Board
15. Composition of Board
16. Appointment of members
17. Chairperson and Deputy Chairperson
18. Term of office of members
19. Vacation of office of member
20. Termination of appointment of member
21. Leave of absence
22. Disclosure of interests by members

Division 2 – Procedures of Board

- 23. Convening of members of Board
- 24. Meetings of Board
- 25. Procedure of Board

PART 4 – PROPERTY, FINANCE AND REPORTS

- 26. Certain property vests in Corporation
- 27. Acquisition of estates in fee simple in Crown land by Corporation
- 28. Money of Corporation
- 29. Proper accounts to be kept etc.
- 30. Corporation to report to Minister regarding financial position of Corporation
- 31. Provision of financial information to Treasurer
- 32. Annual report of Corporation

PART 5 – BY-LAWS

- 33. Power to make By-laws
- 34. Subject matter of By-laws
- 35. Application of By-laws
- 36. Recovery of penalties imposed under By-laws
- 37. Section 57 of *Interpretation Act* does not apply to By-laws
- 38. Proof of By-laws and suspension of By-laws

PART 6 – MISCELLANEOUS

- 39. Appointment of staff
- 40. Civil penalties
- 41. Validity of procedures and actions of Corporation
- 42. Protection from liability
- 43. Form and execution of documents by Corporation
- 44. Regulations



NORTHERN TERRITORY OF AUSTRALIA

No. of 2003

AN ACT

to establish a statutory corporation to develop and manage land for use by
new and existing industries in the Territory and associated activities,
and for related purposes

[Assented to 2003]
[Second reading 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Land Development Corporation Act 2003*.

2. Commencement

This Act comes into operation on 1 July 2003.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

"Board" means the Advisory Board established under section 13;

"Chairperson" means the Chairperson of the Board appointed under section 17 or the Deputy Chairperson while acting in the office of the Chairperson;

Land Development Corporation Act 2003

"Corporation" means the Land Development Corporation established under section 4;

"Deputy Chairperson" means the Deputy Chairperson of the Board appointed under section 17;

"land" includes –

- (a) rivers, creeks, streams, watercourses, channels, lakes and lagoons on land; and
- (b) inland and coastal waters;

"member" means the Chairperson, Deputy Chairperson or other member of the Board;

"staff" means the persons who are employed or engaged by the Corporation;

"vehicle" means any means of transport whether self propelled or not and whether used on land or sea or in the air.

(2) A reference in this Act to the land of the Corporation is a reference to land owned, leased, vested in or otherwise acquired or under the control or management of the Corporation.

PART 2 – LAND DEVELOPMENT CORPORATION

4. Establishment of Corporation

- (1) The Land Development Corporation is established.
- (2) The Corporation –
 - (a) is a corporation sole;
 - (b) has 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 are to take judicial notice of the common seal of the Corporation affixed to a document and are to assume that it was duly affixed.

5. Composition of Corporation

- (1) The Corporation consists of a Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act*.

(2) The Minister must, in writing, appoint a Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act* to be the Corporation

6. Functions of Corporation

The functions of the Corporation are –

- (a) to develop the land of the Corporation for use by industrial businesses;
- (b) to promote the land of the Corporation for use by industrial businesses;
- (c) to provide services, facilities and general assistance to facilitate the establishment and conduct of industry on the land of the Corporation; and
- (d) to carry out or facilitate other activities associated with the management of the Corporation's land and its use by industrial businesses, including commercial and recreational activities and activities relating to heritage and environmental conservation.

7. Powers of Corporation

(1) Subject to this Act or an instrument of a legislative or administrative character made under this Act, the Corporation has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions.

- (2) In particular, the Corporation has power to –
 - (a) negotiate and enter into contracts, agreements, schemes and arrangements;
 - (b) purchase, lease or otherwise acquire and hold real or personal property;
 - (c) sell, grant leases of or otherwise dispose of real or personal property;
 - (d) acquire, hold and dispose of rights, privileges, permits, licences and authorities;
 - (e) occupy, use, control and manage land or a building;
 - (f) erect buildings and construct wharves, roads, railways, pipelines, bridges or other facilities;

Land Development Corporation Act 2003

- (g) purchase, lease or hire plant, machinery, equipment or other things for the purpose of conducting its functions;
- (h) impose and collect fees and charges for or in respect of use of its land or a facility on that land;
- (i) accept, hold and enforce undertakings, indemnities, bonds or securities protecting it against loss;
- (j) regulate and prohibit the conduct of persons on its land and set the conditions on which persons may enter or be excluded from a part or parts of its land;
- (k) regulate and prohibit the presence, use and removal of vehicles and animals on its land or a part of its land;
- (l) employ or engage staff, engage consultants and appoint agents and attorneys;
- (m) charge for work, services, goods and information done, supplied or published by the Corporation and for admission on to its land; and
- (n) any other powers conferred on it under this Act.

8. Minister may give Corporation directions

(1) In performing its functions and exercising its powers, the Corporation is subject to the directions of the Minister.

(2) The Minister must lay before the Legislative Assembly a copy of a direction given under subsection (1) within 6 sitting days of the Assembly after giving the direction.

(3) A copy of a direction given under subsection (1) in a financial year is to be included in the Corporation's report for the year prepared under section 32.

9. Corporation to take commercial approach

(1) Subject to this Act, the Corporation must act in a commercial manner.

(2) The Minister may direct the Corporation under section 8 to act in a manner other than a commercial manner.

(3) If the Minister directs the Corporation to act in a manner that is not commercial, the Minister must specify in the direction the manner in which the Corporation must act.

10. Corporation an Agency

(1) The Corporation is an Agency for the purposes of the *Public Sector Employment and Management Act* and the *Financial Management Act*.

(2) Subsection (1) applies whether or not the Corporation is nominated in the Administrative Arrangements Order as an Agency for the purposes of either the *Public Sector Employment and Management Act* or the *Financial Management Act* or for the purposes of both of those Acts.

(3) The person appointed to be the Corporation under section 5 –

(a) is the Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act* of the Corporation; and

(b) is the accountable officer within the meaning of the *Financial Management Act* of the Corporation.

11. Corporation excluded matter under Corporations Act 2001

The 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.

12. Delegation

(1) The Corporation may, in writing, delegate to a person or body any of its powers or functions under this Act, other than this power of delegation.

(2) If the Corporation delegates to a body and there is a change in the membership of the body, the delegation continues in force as a delegation of the power or function to the body as newly constituted unless the Corporation expressly revokes or varies the instrument of delegation.

PART 3 – ADVISORY BOARD

Division 1 – Establishment and membership of Board

13. Establishment of Advisory Board

There is an Advisory Board.

14. Function of Board

(1) The function of the Board is to advise the Corporation on its activities and the manner in which it carries out those activities.

(2) The Corporation may refer a matter relating to its activities to the Board and the Board must advise the Corporation on the matter.

15. Composition of Board

- (1) The Board consists of 5 members.
- (2) The person appointed to be the Corporation is a member of the Board.
- (3) Of the remaining 4 members, at least 3 are to be persons who are not chief executive officers, or employees, within the meaning of the *Public Sector Employment and Management Act*.

16. Appointment of members

- (1) This section does not apply to the member referred to in section 15(2).
- (2) Subject to section 15(3) and subsection (2), the Minister must, in writing, appoint the members of the Board.
- (3) The Minister must not appoint a person to be a member unless he or she is satisfied that the person holds suitable qualifications or has suitable knowledge or experience relating to the objects of this Act and the powers and functions of the Corporation.

17. Chairperson and Deputy Chairperson

- (1) Subject to subsection (2), the Minister must appoint a member to be the Chairperson of the Board and another member to be the Deputy Chairperson of the Board.
- (2) The Minister must not appoint a member who is a chief executive officer, or an employee, within the meaning of the *Public Sector Employment or Management Act* to be the Chairperson or the Deputy Chairperson.
- (3) If, for any reason, the Chairperson is unable to exercise his or her powers or perform his or her functions or there is a vacancy in the office of Chairperson, the Deputy Chairperson must act in the office of Chairperson.

18. Term of office of members

- (1) This section does not apply to the member referred to in section 15(2).
- (2) A member holds office for –
 - (a) 3 years; or

- (b) the lesser period (if any) specified in the instrument of appointment in respect of the member,

and is eligible for re-appointment.

(3) Despite subsection (1), unless a member sooner vacates his or her office or is removed from office under section 20, on the expiration of the term of office of the member, the member continues to hold office until a successor is appointed.

19. Vacation of office of member

(1) This section does not apply to the member referred to in section 15(2).

(2) A member vacates the member's office if –

- (a) the member's term of office expires; or
- (b) the member resigns the member's office by writing signed by the member and delivered to the Minister.

20. Termination of appointment of member

(1) This section does not apply to the member referred to in section 15(2).

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

(3) The Minister must terminate the appointment of a member if –

- (a) the member is absent, except on leave granted by the Chairperson, from 3 consecutive meetings of the Board; or
- (b) the member knowingly contravenes or fails to comply with section 22.

(4) A member's appointment terminates on either of the following occurring:

- (a) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the member's remuneration for their benefit;
- (b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more or is found guilty by a court outside the Territory of an offence which, if

Land Development Corporation Act 2003

committed against a law in force in the Territory, would be an offence punishable by imprisonment for 12 months or more.

(5) The termination of an appointment under subsection (2) or (3) is to be in writing and a copy is to be given to the member.

21. Leave of absence

The Chairperson may grant a member leave of absence.

22. Disclosure of interests by members

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

(2) The disclosure is to be recorded in the Board's minutes.

(3) Subject to a resolution of the Board to the contrary, a member who has made a disclosure under subsection (1) –

(a) must not, while the member has the interest, take part in any deliberation or decision of the Board relating to the matter in which the member has the interest; and

(b) is to be disregarded for the purpose of constituting the quorum of the Board for the purpose of any deliberation or decision of the Board relating to the matter in which the member has the interest.

(4) The resolution of the Board to the contrary is to be deliberated and voted on in the absence of the member.

Division 2 – Procedures of Board

23. Convening of members of Board

(1) The members of the Board must meet as often as is necessary to perform its functions.

(2) The Minister may, in writing, direct the Board to meet.

(3) The Chairperson must make the arrangements that enable the members to meet.

24. Meetings of Board

(1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both of the Chairperson and the Deputy

Land Development Corporation Act 2003

Chairperson, the member elected by the members present from amongst their number must preside at a meeting of the Board.

(2) Each member present at a meeting has one vote.

(3) Questions arising at a meeting of the Board are to be determined by a majority of the votes of the members present and, in the event of an equality of votes, the person presiding over the meeting has a casting vote.

(4) At a meeting of the Board, 3 members constitute a quorum.

25. Procedure of Board

(1) Unless otherwise prescribed, the procedures of the Board are to be determined by the Board.

(2) The Board must keep a record of all its meetings and other proceedings.

PART 4 – PROPERTY, FINANCE AND REPORTS

26. Certain property vests in Corporation

(1) On the commencement of this Act, all estates and interests in property, real and personal, and rights held by the Trade Development Zone Authority within the meaning of the *Trade Development Zone Act* immediately before the commencement of this Act vest in the Corporation, subject to any liabilities, charges, obligations, conditions, terms or trusts affecting the estates or interests.

(2) On the commencement of this Act, all levies, fees, charges, interest, debts or money payable to and recoverable by the Trade Development Zone Authority become payable to and recoverable by the Corporation.

27. Acquisition of estates in fee simple in Crown land by Corporation

(1) The Corporation may be granted an estate in fee simple in Crown land, or a lease of Crown land, under the *Crown Lands Act*.

(2) If the Corporation is granted land in accordance with subsection (1), the Minister must give notice of the grant by notice in the *Gazette*.

28. Money of Corporation

(1) The money of the Corporation consists of –

(a) money that is appropriated for its purposes;

(b) money received as grants;

Land Development Corporation Act 2003

- (c) money received in performing its functions and exercising its powers; and
- (d) any other money that from time to time becomes available for use by the Corporation.

(2) The money of the Corporation is only to be applied for the purposes of the Corporation.

29. Proper accounts to be kept etc.

The Corporation must ensure that –

- (a) proper accounts and records of the transactions and affairs of the Corporation are kept;
- (b) there are adequate controls over the incurring of liabilities of the Corporation;
- (c) all payments out of the money of the Corporation are correctly made and properly authorised; and
- (d) adequate control is maintained over the property of or in the custody, control and management of the Corporation.

30. Corporation to report to Minister regarding financial position of Corporation

- (1) If the Corporation –
 - (a) considers that a matter is affecting its operations in such a way that hinders, prevents or otherwise adversely affects to a significant degree its performance of its functions or its financial position; or
 - (b) expects a matter to affect its operations in such a way that will hinder, prevent or otherwise adversely affect to a significant degree its performance of its functions or its financial position,

the Corporation must, as soon as practicable after becoming aware of the matter, inform the Minister in writing of –

- (c) the matter;
- (d) the reasons that it considers that the matter is affecting or will affect its performance or its financial position; and
- (e) the effect the matter is having or the likely effect the matter will have on its performance or its financial position.

(2) The Corporation must, in writing, report to the Minister in respect of each financial year or other reporting period determined by the Minister about its financial performance during that period and its expected financial performance during the next 2 reporting periods.

(3) The report under subsection (2) is to at least –

- (a) specify the financial performance targets of the Corporation for the reporting period, identify the targets the Corporation achieved and the targets it exceeded, identify the targets it did not achieve and specify the reasons why it did not achieve them;
- (b) detail the financial performance objectives of the Corporation for the next 2 reporting periods and include details of –
 - (i) the projected nature and scope of its activities for those periods, including material contracts and terms and conditions of any lease or sale or purchase of real property;
 - (ii) its financial projections for those periods; and
 - (iii) the likely financial risks for the Corporation and its strategies to minimise the risks; and
- (c) contain any other information the Minister requires.

(4) The Corporation must give the report under subsection (2) to the Minister within 3 months after the end of the reporting period it refers to.

31. Provision of financial information to Treasurer

(1) The Treasurer may at any time request the Corporation to provide the Treasurer with the information that the Treasurer considers will enable him or her to accurately assess the financial affairs of the Corporation.

(2) The Corporation must comply with the Treasurer's request.

32. Annual report of Corporation

(1) At the end of each financial year the Corporation must prepare a report on the administration of this Act and the operations of the Corporation during the financial year.

(2) The report is to include a copy of any directions and reasons for directions given to the Corporation, and any objections to the directions made by the Corporation, under section 8 during the financial year.

(3) The Corporation must forward a copy of the report to the Minister by 30 November following the end of the financial year.

(4) The Minister must lay a copy of the report before the Legislative Assembly within 6 sitting days of the Legislative Assembly after receiving the report.

PART 5 – BY-LAWS

33. Power to make By-laws

(1) The Corporation may make by-laws relating to the management of its land.

(2) The Corporation may not make a by-law that is inconsistent with this Act, or any other Act or any regulations, or that is unlawful.

34. Subject matter of By-laws

(1) The By-laws may provide for the following:

- (a) the regulation or prohibition of access to and use of the land of the Corporation and buildings on the land of the Corporation;
- (b) the regulation or prohibition of the conduct of persons on the land of the Corporation or in a building on the land of the Corporation;
- (c) the regulation or prohibition of the presence, use and removal of vehicles and animals on the land of the Corporation or in a building on the land of the Corporation and provide for the impounding or disposal of such vehicles or animals;
- (d) the regulation of vehicular and pedestrian traffic on the land of the Corporation;
- (e) the parking of vehicles and the erection, form of and markings on traffic signs and directions on the land of the Corporation;
- (f) the security and general facility of the land of the Corporation;
- (g) penalties not exceeding 2 penalty units for offences against the By-laws.

(2) A by-law may provide for matters of regulation or prohibition, either absolutely or conditionally or in relation to a class of acts, matters or things or a situation or other circumstance.

(3) A by-law may –

- (a) authorise a member of the staff or other person to do an act or thing (including the giving of directions by a member of the staff or other person); or

- (b) provide that an act or thing is to be done with the approval of a member of the staff or other person.

35. Application of By-laws

- (1) The application of a by-law may be limited to –
 - (a) the whole or a specified part of the land of the Corporation; or
 - (b) in relation to a specified class of persons or circumstances.
- (2) The Corporation may, in the manner prescribed by the Regulations, suspend the operation of a by-law –
 - (a) for a specified period;
 - (b) on the whole or a specified part of the land of the Corporation; or
 - (c) in relation to a specified class of persons or circumstances.

36. Recovery of penalties imposed under By-laws

(1) If a penalty is imposed on a person as a result of a prosecution for an offence committed against a by-law, or a penalty is payable under an infringement notice in lieu of prosecution of an offence committed or allegedly committed against a by-law, the penalty may be recovered by the Corporation as a debt due and payable to the Corporation by the person on whom it is imposed.

(2) Subsection (1) does not affect the operation of the *Fines and Penalties Act*.

37. Section 57 of Interpretation Act does not apply to By-laws

Section 57 of the *Interpretation Act* does not apply to the By-laws.

38. Proof of By-laws and suspension of By-laws

- (1) In any proceedings, the production of –
 - (a) a copy of a by-law purporting to be a true copy of the by-law on which the Corporation's common seal is affixed and which is certified as a true copy of the by-law and signed by a person authorised by the Corporation to do so; and
 - (b) the *Gazette* in which notification of the making of the by-law is published,

is conclusive evidence of the by-law having been made and the contents of the by-law.

(2) In any proceedings, the production of a copy of the notice (if any) required by the Regulations to be given in relation to the suspension of a by-law purporting to be a true copy of the notice on which the Corporation's common seal is affixed, and which is certified as a true copy of the notice and signed by a person authorised by the Corporation to do so, is conclusive evidence of the suspension of the by-law.

PART 6 – MISCELLANEOUS

39. Appointment of staff

In addition to employees employed under the *Public Sector Employment and Management Act*, the Corporation may, on the terms and conditions it considers appropriate, employ any other persons it considers necessary for the purposes of the Corporation.

40. Civil penalties

(1) An agreement to which the Corporation is a party may provide that, if a party other than the Corporation is in breach of an obligation under the agreement, that party is required to pay to the Corporation by way of a civil penalty for the breach the amount determined in accordance with the agreement.

(2) The agreement may also provide that the amount of the civil penalty is to increase over the period during which the obligation continues by a further amount determined in accordance with the agreement.

(3) A civil penalty payable under this section is a debt due to the Corporation by the party concerned despite the following:

- (a) that neither the Corporation or any other person (whether a party to the agreement or not) suffered damage as a result of the breach;
- (b) that the amount of the civil penalty is unrelated to the extent of any damage that the Corporation or any other person (whether a party to the agreement or not) may have suffered as a result of the breach.

41. Validity of procedures and actions of Corporation

A procedure of the Corporation, or an act or thing done by a delegate of the Corporation, is not invalid by reason only of any of the following:

- (a) a defect in the appointment of a person to be the Corporation;
- (b) a defect in a delegation by the Corporation.

42. Protection from liability

(1) This section applies to a person who is or has been –

- (a) a person appointed to be the Corporation; or
- (b) a member of the staff.

(2) The person is not civilly or criminally liable for an act done or omitted to be done, by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) In addition, the person is not civilly or criminally liable for an act done, or omitted to be done, by the Corporation in the exercise or purported exercise, or the performance or purported performance of a function, under this Act.

(4) Subsections (2) and (3) do not affect any liability the Territory would, apart from those subsections, have for the act or omission.

43. Form and execution of documents by Corporation

(1) A deed, instrument, contract or agreement relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Corporation in writing under its common seal.

(2) An instrument, contract or agreement relating to any property or matter that, if made by or between individuals, would be required to be in writing signed by the parties to it may be made or entered into on behalf of the Corporation in writing by a person acting under the authority, express or implied, of the Corporation.

(3) A contract relating to any property or matter that, if made between individuals, would by law be valid, although made or entered into by parole only and not reduced to writing, may be made on behalf of the Corporation by a person acting under the authority, express or implied, of the Corporation.

(4) A contract entered into, or an instrument, contract or agreement signed, in relation to any property or obligation of the Corporation is taken to have been entered into or signed by the Corporation if it is entered into or signed by a person acting under the authority, express or implied, of the Corporation.

44. Regulations

(1) 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.
- (2) The Regulations may provide for the following:
- (a) the use and custody of the common seal of the Corporation;
 - (b) the manner of holding and adjourning meetings of the Board;
 - (c) the manner in which the Corporation may suspend the operation of a by-law;
 - (d) matters of liability, evidence and procedure relating to the commission and prosecution of offences against the By-laws;
 - (e) penalties not exceeding 100 penalty units or, if the offender is a body corporate, 500 penalty units for offences against the Regulations;
 - (f) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the By-laws or the Regulations and the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice;
 - (g) the designation of an offence against the Regulations or the By-laws as a regulatory offence.
-
-