

Passed by both Houses



New South Wales

Growth Centres (Development Corporations) Amendment Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Growth Centres (Development Corporations) Amendment Bill 2008

Act No , 2008

An Act to amend the *Growth Centres (Development Corporations) Act 1974* to provide that development corporations constituted under that Act may be governed either by a board or directly by a chief executive; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Growth Centres (Development Corporations) Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Growth Centres (Development Corporations) Act 1974 No 49

The *Growth Centres (Development Corporations) Act 1974* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

board governed development corporation means a development corporation that, as specified in Schedule 1, is governed by a board.

chief executive governed development corporation means a development corporation that, as specified in Schedule 1, is governed by a chief executive.

exercise a function includes perform a duty.

function includes a power, authority or duty.

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

[2] Section 3 (1), definitions of “Chairperson”, “chief executive” and “member”

Omit the definitions of *Chairperson*, *chief executive* and *member*.

Insert instead, respectively:

Chairperson, in relation to a board governed development corporation, means the chairperson of the board of the development corporation.

chief executive means the chief executive of a development corporation within the meaning of section 6B.

member, in relation to a board governed development corporation, means a member of the board of the development corporation, and includes the chief executive.

[3] Sections 3 (2) (a), 7 (1) and (2) (a), 9 (2) (a), 13 (2) (b), 16 (1), 18 (3) and 22 (b)

Omit “was constituted” wherever occurring. Insert instead “is constituted”.

[4] Part 2

Omit the Part. Insert instead:

Part 2 Constitution of development corporations

Division 1 General

4 Constitution of development corporations and growth centres

- (1) There are constituted by this Act such development corporations as are specified from time to time in Schedule 1.
- (2) A development corporation is a body corporate with the corporate name specified in column 1 of Schedule 1.
- (3) The growth centre in respect of which a development corporation is constituted is the area of land described in any manner (including by reference to a description contained in another document) in column 2 of Schedule 1 in relation to the development corporation.
- (4) A development corporation is to be either a chief executive governed development corporation or a board governed development corporation, as specified from time to time in column 3 of Schedule 1.
- (5) A development corporation is a NSW Government agency.

5 Amendment of Schedule 1 (Growth centres and development corporations)

- (1) The Governor may, by order published in the Gazette:
 - (a) constitute a development corporation by inserting the name of a development corporation into column 1 of Schedule 1 and inserting the nature of governance of the development corporation (either “Board” or “Chief executive”) into column 3 of Schedule 1, or
 - (b) dissolve a development corporation by omitting the matter relating to the development corporation from Schedule 1, or
 - (c) change the name of a development corporation by amending the name of the development corporation in column 1 of Schedule 1, or

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- (d) establish a growth centre by inserting a description of land in column 2 of Schedule 1, or
 - (e) abolish a growth centre by omitting the description of land of the growth centre from column 2 of Schedule 1, or
 - (f) alter a growth centre by amending the description of land of the growth centre in column 2 of Schedule 1, or
 - (g) change the nature of governance of a development corporation:
 - (i) from board governed to chief executive governed by omitting the word “Board” from column 3 of Schedule 1 and inserting instead the words “Chief executive”, or
 - (ii) from chief executive governed to board governed by omitting the words “Chief executive” from column 3 of Schedule 1 and inserting instead the word “Board”, or
 - (h) amalgamate 2 or more development corporations by omitting all the matter relating to the development corporations to be amalgamated from Schedule 1 and inserting instead:
 - (i) in column 1 of that Schedule, the name of the amalgamated development corporation, and
 - (ii) in column 2 of that Schedule, a description of the growth centre in respect of which the amalgamated development corporation is constituted, and
 - (iii) in column 3 of that Schedule, the nature of governance of the amalgamated development corporation (either “Board” or “Chief executive”).
- (2) A development corporation may be constituted in respect of a growth centre within any area (including, but not limited to, an urban area or a rural area).
- (3) Schedule 1A has effect with respect to orders made under this section.
- (4) An order under this section may contain provisions, not inconsistent with the provisions of or made under Schedule 1A, of a savings and transitional nature consequent on the making of the order.
- (5) The Governor may only make an order under subsection (1) (b) to dissolve a development corporation on the recommendation of the Minister.

- (6) The Minister is not to make such a recommendation to the Governor unless the Minister is satisfied that the development corporation concerned has substantially completed its planning and development functions in respect of the growth centre for which it is constituted.
- (7) An order under this section must specify the date (being a date that is on or after the date it is published in the Gazette) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published in the Gazette as the date on which it takes effect.

Division 2 Constitution and procedure of development corporations

6 Governance of development corporation

- (1) The affairs of a development corporation are to be managed and controlled by:
 - (a) if the development corporation is a chief executive governed development corporation—the chief executive of the development corporation, or
 - (b) if the development corporation is a board governed development corporation—the chief executive, subject to and in accordance with any directions given to the chief executive by the board of the development corporation.
- (2) In the exercise of its functions, a development corporation is, except where it makes a recommendation to the Minister, subject to the control and direction of the Minister.

6A Development corporation boards

- (1) There is constituted a development corporation board for each board governed development corporation.
- (2) A development corporation board is to be called the “[*name of board governed development corporation*] Board”.
- (3) A board of a development corporation is to consist of:
 - (a) not less than 4 persons appointed by the Governor, and
 - (b) the chief executive, and
 - (c) if a person is appointed as the chief executive under section 6B—the Director-General (or a person nominated by the Director-General).

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- (4) The Governor may appoint a person to be a member of the board of a development corporation before the order made under section 5 (1) (a) relating to the development corporation takes effect, but the term of office of any such member commences on the date on which the order takes effect or a later date specified in the order.
 - (5) Schedule 2 has effect in relation to board governed development corporations.

6B Chief executives of development corporations

- (1) The Minister is to appoint a chief executive for each development corporation.
- (2) If from time to time a vacancy exists in the office of a chief executive of a development corporation, the Director-General is to act in that position and while acting is taken to be the chief executive of the development corporation.
- (3) If the development corporation is a board governed development corporation, the chief executive may be represented at any meeting of the board by a person nominated for the time being by the chief executive. In representing the chief executive, the person nominated has and may exercise the same functions as the chief executive has at such a meeting (including voting rights), and is taken to be the chief executive.
- (4) If the development corporation is a chief executive governed development corporation:
 - (a) except when making a recommendation to the Minister, the chief executive is, in the exercise of his or her functions, subject to the control and direction of the Minister, and
 - (b) any act, matter or thing done in the name of, or on behalf of, the development corporation by the chief executive of that development corporation is taken to have been done by the development corporation.
- (5) The employment of a chief executive appointed by the Minister under subsection (1) is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 1A or 2 of that Act.

[5] Part 3A, heading

Omit the heading to Part 3A. Insert instead:

Part 3A Establishment of Ministerial Development Corporation

[6] Part 3A, Divisions 1 and 2

Omit the Divisions.

[7] Part 3A, Division 3, heading

Omit the heading.

[8] Section 23F Functions of Ministerial Development Corporation

Insert after section 23F (3):

- (4) In this section, *dissolved development corporation* means a development corporation which is dissolved by an order under section 5 (1) (b).

[9] Section 33 Misuse of information

Insert “of the board” after “member” in section 33 (6) (a).

[10] Section 34 Disclosure of interest

Omit “development corporation, or a member of a committee or a sub-committee of a development corporation” from section 34 (1).

Insert instead “board of a development corporation, or a member of a committee or a sub-committee of such a board,”.

[11] Section 34 (1)

Omit “the corporation, the committee or the sub-committee” wherever occurring.

Insert instead “the board, committee or sub-committee”.

[12] Section 34 (5)

Omit “a member, or a member of a committee or a sub-committee, of a development corporation”.

Insert instead “a member of a board of a development corporation, or a member of a committee or a sub-committee of such a board,”.

[13] Section 34 (8) and (9)

Omit “development corporation or a committee or sub-committee of a development corporation” wherever occurring.

Insert instead “board of a development corporation, or a committee or a sub-committee of such a board.”.

[14] Section 34 (9)

Omit “development corporation, committee or sub-committee”.

Insert instead “board, committee or sub-committee”.

[15] Section 34 (11)

Omit “member of a development corporation”.

Insert instead “member of a board of a development corporation”.

[16] Section 34 (11)

Omit “by the development corporation at a meeting of the development corporation”.

Insert instead “by the board of the development corporation at a meeting”.

[17] Section 35B

Insert after section 35A:

35B Protection from personal liability

Anything done or omitted to be done by:

- (a) a development corporation, or
 - (b) a board of a development corporation, or
 - (c) a chief executive of a development corporation, or
 - (d) a member of a board of a development corporation, or
 - (e) a person acting under the direction of a development corporation or a board of a development corporation, or
 - (f) a person acting as a delegate of a development corporation,
- if the thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, does not subject the chief executive, the member of the board of the development corporation or the person so acting personally to any action, liability, claim or demand.

[18] Schedules 1 and 1A

Omit Schedule 1. Insert instead:

Schedule 1 Growth centres and development corporations

(Sections 4 and 5)

Column 1	Column 2	Column 3
Name of development corporation	Description of land of growth centre	Nature of governance
Hunter Development Corporation	All those pieces or parcels of land within the local government areas of Cessnock, Dungog, Gloucester, Great Lakes, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton and Upper Hunter as at 1 January 2008.	Board
Festival Development Corporation	All those pieces or parcels of land within the local government area of the City of Gosford being land generally bounded by: <ul style="list-style-type: none"> (a) the Pacific Highway in the east and south, and (b) Kangoo Road in the west and north, as shown by thick black edging on the map entitled "Festival Development Corporation", copies of which are deposited at the Department of Planning (<i>the map</i>), but excluding: <ul style="list-style-type: none"> (c) the residential area at Kariong off Old Mt Penang Road, and 	Board

Column 1	Column 2	Column 3
Name of development corporation	Description of land of growth centre	Nature of governance
	(d) the area designated for occupation by the Department of Juvenile Justice, and	
	(e) the public reserve between Kangoo Road and the Pacific Highway in the north-east, as shown on the map.	
Cooks Cove Development Corporation	All those pieces or parcels of land in the Parish of St George, County of Cumberland, as shown by yellow colouring on the map entitled "Cooks Cove Development Corporation", copies of which are deposited in the offices of the Sydney Harbour Foreshore Authority.	Board
Growth Centres Commission	All those pieces or parcels of land shown edged heavy red on the map entitled "North West Growth Centre" and the map entitled "South West Growth Centre (Version 2)", copies of which are deposited in the office of the Growth Centres Commission.	Chief executive

Schedule 1A Dissolutions, amalgamations and changes of name or nature of governance

(Section 5 (3))

Part 1 General

1 Definitions

In this Schedule:

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

transferee means the person or body to which any assets, rights or liabilities are transferred.

transferor means the person or body from which any assets, rights or liabilities are transferred.

2 Orders to which this Schedule applies

This Schedule applies to the following orders:

- (a) an order under section 5 (1) (b) dissolving a development corporation,
- (b) an order under section 5 (1) (c) changing the name of a development corporation,
- (c) an order under section 5 (1) (g) (i) changing the nature of governance of a development corporation from board governance to chief executive governance,
- (d) an order under section 5 (1) (h) amalgamating 2 or more development corporations.

3 Effect of orders

(1) Dissolution orders

On and from the date specified in an order made under section 5 (1) (b) dissolving a development corporation:

- (a) the development corporation is dissolved, and
- (b) the chief executive of the development corporation ceases to hold office, and
- (c) in the case of a board governed development corporation, the members of the board (other than the chief executive)

cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and

- (d) the assets, rights and liabilities of the development corporation are transferred to the Ministerial Development Corporation, and
- (e) Part 2 applies to that transfer.

(2) **Amalgamation orders**

On and from the date specified in an order made under section 5 (1) (h) for the amalgamation of 2 or more development corporations:

- (a) each development corporation amalgamated by the order is dissolved, and
- (b) the chief executive of each development corporation amalgamated by the order ceases to hold office, and
- (c) the members of any board governed development corporation involved in the amalgamation (other than any chief executive) cease to hold office, and:
 - (i) if the amalgamated corporation is a board governed development corporation, are eligible (if otherwise qualified) to be appointed as members of the board of the amalgamated corporation, and
 - (ii) are not entitled to be paid any compensation by reason of ceasing to hold office, and
- (d) the assets, rights and liabilities of each amalgamating development corporation are transferred to the amalgamated development corporation, and
- (e) Part 2 applies to that transfer.

(3) **Name change orders**

On and from the date specified in an order made under section 5 (1) (c) changing the name of a development corporation, Part 3 applies to that change of name.

(4) **Change of governance orders**

On and from the date specified in an order made under section 5 (1) (g) (i) changing the nature of governance of a development corporation from board governance to chief executive governance, the members of the board of the development corporation (other than the chief executive) cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office.

(5) **Effect on compensation rights**

Nothing in this Schedule affects any compensation rights to which the chief executive of a dissolved or amalgamating development corporation may be entitled under Part 3.1 of the *Public Sector Employment and Management Act 2002* as a consequence of ceasing to hold office as such.

Part 2 Transfers

4 Vesting of undertaking in transferee

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Part applies, the following provisions have effect:
- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
 - (4) A transfer is subject to the terms and conditions of the order giving rise to the transfer.
 - (5) No compensation is payable to any person or body in connection with a transfer to which this Part applies except to the extent (if any) to which the order giving rise to the transfer so provides.

5 Date of vesting

A transfer to which this Part applies takes effect on the date specified in the order giving rise to the transfer.

6 Consideration for vesting

The Minister may, by order in writing, specify the consideration on which a transfer to which this Part applies is made and the value or values at which the assets, rights or liabilities are transferred.

7 No duties on transfer

Duty under the *Duties Act 1997* is not chargeable for or in respect of:

- (a) a transfer to which this Part applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

8 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Part.
- (2) Such a notice is conclusive evidence of that transfer.

Part 3 Changes of name

9 Name changes do not affect status of service

A change of name of a development corporation by an order does not operate:

- (a) to create a new legal entity, or
- (b) to prejudice or affect the identity of the body corporate constituted as a development corporation or its continuity as a body corporate, or
- (c) to affect the property, or the rights or obligations, of the development corporation, or
- (d) to render defective any legal proceedings by or against the development corporation,

and any legal proceedings that could have been continued or commenced by or against the development corporation by its former name may be continued or commenced by or against it by its new name.

Part 4 Savings and transitional regulations

10 Regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the making of an order to which this Schedule applies.
- (2) A provision referred to in subclause (1) which relates to a particular order may, if the regulations so provide, take effect as from the date of the order or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a development corporation), the rights of that person existing before the date of its publication in the Gazette, or
 - (b) to impose liabilities on any person (other than the State, an authority of the State or a development corporation) in respect of anything done or omitted to be done before the date of its publication in the Gazette.
- (4) A provision referred to in subclause (1) has, if the regulations so provide, effect despite any other clause of this Schedule.

[19] Schedule 2, heading and source reference

Omit the heading of, and source reference to, the Schedule. Insert instead:

**Schedule 2 Provisions relating to the
constitution and procedure of board
governed development corporations**

(Section 6A)

[20] Schedule 2, clauses 1A and 1B

Omit clause 1A. Insert instead:

1A Application of Schedule to Director-General and nominee

This Schedule (other than clause 9 (2)) applies to and in respect of a person who is a member of the board of a development corporation under section 6A (3) (c) in the same way as it applies to and in respect of a chief executive of a board governed development corporation.

1B Definitions

In this Schedule:

board means the board of the development corporation.

member means any member of the board.

[21] Schedule 2, clause 1

Omit “Chairperson of the development corporation”.

Insert instead “Chairperson of the board”.

[22] Schedule 2, clause 9 (1)

Omit the subclause. Insert instead:

- (1) Subject to subclause (2), the quorum for a meeting of the board is:
 - (a) if the board has an even number of members—one half of that number, and
 - (b) in any other case—a majority of its members.

[23] Schedule 2, clauses 10–15

Omit clauses 10–14. Insert instead:

10 General procedure

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the board.

11 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the board who are present at a meeting of the board, not being the chief executive) is to preside at a meeting of the board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.

13 Transaction of business outside meetings or by telephone

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the board.
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the board.

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- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

14 Minutes

The board must:

- (a) cause full and accurate minutes to be kept of the proceedings of each meeting of the board, and
- (b) submit a copy of those minutes to the Minister within one week after the date of the meeting.

15 Committees and sub-committees of boards

- (1) The board may establish committees to assist it in the exercise of its functions.
- (2) The board (or a committee of a board referred to in subclause (1) with the approval of the board) may establish sub-committees to assist a committee in the exercise of such of the committee's functions as are referred to the sub-committee by the board (or by the committee with the approval of the board).
- (3) It does not matter that any or all of the members of a committee or a sub-committee are not members of the board.
- (4) Unless determined otherwise by the board, the procedure of a committee or a sub-committee is to be the same as for the board.

[24] Schedule 2, clause 19 (b) and (d)

Insert "the board of" before "the development corporation" wherever occurring.

[25] Schedule 6 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Preliminary

[26] Schedule 6

Insert at the end of clause 3 (1):

Growth Centres (Development Corporations) Amendment Act 2008

[27] Schedule 6, Part 2

Insert at the end of the Schedule:

Part 2 Growth Centres (Development Corporations) Amendment Act 2008

4 Definition

In this Part, *the amending Act* means the *Growth Centres (Development Corporations) Amendment Act 2008*.

5 Existing growth centres and development corporations

- (1) The substitution of Part 2 of this Act by Schedule 1 [4] to the amending Act does not affect:
 - (a) the status of any growth centre that existed immediately before that substitution, and
 - (b) the corporate status of any development corporation that existed immediately before that substitution, and each such development corporation is the continuation of, and is the same legal entity as, the development corporation constituted under the same name before that substitution.
- (2) On the substitution of Part 2 of this Act by Schedule 1 [4] to the amending Act:
 - (a) each development corporation that existed immediately before that substitution ceases to be a corporation comprised of members and becomes a corporation without members, and
 - (b) the members of each development corporation cease to hold office as members of the corporation, but are not entitled to be paid any compensation by reason of ceasing to hold office, and
 - (c) each person holding office as the chief executive of a development corporation immediately before that substitution is taken to be appointed under section 6B of this Act on the same terms and conditions on which, and for the balance of the term for which, the person was appointed, and
 - (d) a board is constituted for each such development corporation (other than the Growth Centres Commission), and
 - (e) each person who was an appointed member of such a development corporation (other than the Growth Centres

Commission) immediately before that substitution is taken to have been appointed to that board under the relevant provision of section 6A of this Act as if the amending Act had been in force at the time of the appointment, and

- (f) the Growth Centres Commission is taken to be a chief executive governed development corporation.

6 Validation

Anything done before the commencement of the following provisions that would have been validly done had those provisions been in force when it was done is validated:

- (a) section 5 (1) (c) of, and clause 2 of Schedule 1A to, this Act (as inserted by the amending Act),
- (b) Schedule 1 [3] to the amending Act.

7 Validation of certain resignations from Growth Centres Commission

Any purported resignation by a member of the Growth Centres Commission (in any form) is taken to be a valid resignation from that office taking effect on and from its purported date.