

Passed by both Houses



New South Wales

# State Property Authority Bill 2006

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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, , 2006*



New South Wales

## **State Property Authority Bill 2006**

Act No , 2006

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An Act to constitute the State Property Authority as a corporation with functions relating to the acquisition, management and disposal of property vested in the Crown and government agencies; to provide for the transfer of certain property to the Authority; and for other purposes.

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

*Chairman of Committees of the Legislative Assembly.*

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Clause 1 State Property Authority Bill 2006

Part 1 Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *State Property Authority Act 2006*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Definitions**

(1) In this Act:

**Chief Executive Officer** means the Chief Executive Officer of the Authority holding office as such under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**government agency** means any of the following:

- (a) a public authority constituted by or under an Act,
- (b) a statutory body representing the Crown,
- (c) a Department of the Public Service,

but does not include a State owned corporation, a local authority or any person or body exempted by the regulations from this definition.

**interest** in land means:

- (a) a legal or equitable estate or interest in the land, or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land.

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

**property** of a government agency means:

- (a) land that is vested in the government agency, or land that is vested in the Crown or Her Majesty and that is controlled and used by the government agency, or
- (b) an interest in any such land.

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

***the Authority*** means the State Property Authority constituted by this Act.

- (2) Notes included in this Act do not form part of this Act.

## **Part 2 Constitution and management of Authority**

### **4 Constitution of Authority**

There is constituted by this Act a corporation with the corporate name of the State Property Authority.

### **5 Status of Authority**

The Authority is a statutory body representing the Crown and has the status, privileges and immunities of the Crown.

### **6 Ministerial control**

The Authority is subject to the control and direction of the Minister in the exercise of its functions.

### **7 Chief Executive Officer**

- (1) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Authority.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

### **8 Delegation of Authority's functions**

- (1) The Authority may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.
- (3) This section extends to any function delegated to the Authority under section 12.
- (4) In this section, *authorised person* means:
  - (a) a member of staff of the Division of the Government Service comprising the group of staff who are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* to enable the Authority to exercise its functions, or
  - (b) a person, or committee of persons, of a class approved by the Minister or prescribed by the regulations.

**9 Exercise of functions through private subsidiaries, joint ventures etc**

Any function of the Authority may be exercised:

- (a) by the Authority itself, or
- (b) by a private subsidiary corporation (within the meaning of section 16), or
- (c) by the Authority or such a private subsidiary corporation, or both, in a partnership, joint venture or other association with other persons or bodies.

## **Part 3 Objectives and functions of Authority**

### **10 Objectives of Authority**

The principal objectives of the Authority in exercising its functions are as follows:

- (a) to improve operational efficiencies in the use of properties of government agencies, particularly generic properties (such as offices, warehouses, depots and car parks),
- (b) to manage properties of government agencies in a way that supports the service delivery functions of those agencies,
- (c) to provide advice and support within government on property matters,
- (d) to operate at least as efficiently as any comparable business, consistently with the principles of ecologically sustainable development and social responsibility for the community (including the indigenous community).

### **11 Functions—generally**

- (1) The principal functions of the Authority are as follows:
  - (a) to hold, manage, maintain, acquire or dispose of property for the government and government agencies,
  - (b) to carry out, manage, co-ordinate or participate in the development of the property of government agencies (including property of the Authority),
  - (c) to arrange, where appropriate, for the sharing of facilities and premises by government agencies to reduce operational expenses,
  - (d) to provide services or do other things for the management, maintenance or improvement of property of government agencies (including property of the Authority),
  - (e) to provide advice to the Treasurer in relation to properties of government agencies and, in particular, as to whether those properties are being efficiently utilised,
  - (f) to provide advice to the Treasurer on the transfer of properties to the Authority and on budgetary measures relating to the properties of government agencies,
  - (g) to provide advice to the Treasurer on such matters relating to the properties of government agencies (including the property of the Authority) as the Treasurer directs.

- (2) The Authority has such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) The Authority may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.
- (4) However, the Authority cannot employ any staff.

**Note.** Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Authority to exercise its functions.

## **12 Agreements for management of property by Authority**

- (1) A government agency may enter into an agreement with the Authority for the Authority:
  - (a) to hold property for the agency or to manage, maintain or dispose of property of the agency, or
  - (b) to carry out, manage, co-ordinate or participate in the development of the property of the agency, or
  - (c) to acquire any property on behalf of, or for the purposes of, the agency, or
  - (d) to provide services or do other things for the management, maintenance or improvement of property of the agency.
- (2) Any functions of a government agency or officer of a government agency in relation to the management of property that is the subject of an agreement under this section may be delegated to the Authority, despite the provisions of any other Act.
- (3) No trust relationship or any other equitable relationship is established solely because the Authority holds, manages, maintains, disposes of or acquires property on behalf of, or for the purposes of, a government agency under arrangements entered into under this section.
- (4) If a government agency is authorised by or under any Act to use specified funds to acquire, manage, maintain or develop property, the authorisation is taken to extend to providing those funds to the Authority for the acquisition, management, maintenance or development of the property in accordance with arrangements entered into under this section.

### **13 Land dealings**

- (1) The Authority may, with the consent of the Minister, sell, lease, exchange or otherwise dispose of or deal with any land vested in the Authority and grant easements or rights-of-way over such land or any part of it.
- (2) The consent of the Minister under subsection (1):
  - (a) may be given in relation to particular land or a class of land or a particular disposition of or dealing with land or a class of dispositions or dealings, and
  - (b) may be subject to conditions, and
  - (c) may be varied from time to time, and
  - (d) may be withdrawn (but any such withdrawal of consent does not affect any disposition or dealing made, or the subject of a binding agreement made, before the withdrawal).
- (3) The Authority must establish and maintain a register of all land that is, from time to time, vested in or managed by the Authority.

### **14 Dedication of land**

- (1) The Authority may, by notification published in the Gazette, declare that it proposes to surrender land vested in it and described or referred to in the notification to the Crown to be dedicated:
  - (a) for any public purpose specified in the notification, or
  - (b) if so specified in the notification, as a public road.
- (2) When the land is surrendered:
  - (a) it becomes Crown land reserved from sale, lease or licence under the *Crown Lands Act 1989*, and
  - (b) on revocation of the reservation, it may be dedicated under that Act for the public purpose specified in the notification or under section 12 of the *Roads Act 1993* as a public road.
- (3) The Authority may, in a notification published under subsection (1), limit the description of, or reference to, land to a specified depth below the surface of the land. If the description or reference is so limited, subsection (2) does not apply to land below the specified depth.
- (4) The Authority may, by notification published in the Gazette, declare any elevated or subterranean structure owned by the Authority that continues the line of a public road to be a public road. On the publication of the notification in the Gazette, the structure, except in relation to any vesting of the structure, is taken to be a public road.

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**15 Acquisition of property by gift, devise or bequest**

- (1) The Authority may acquire by gift, devise or bequest any property for the purposes of this Act and may agree to carry out the conditions of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift, devise or bequest to which the Authority has agreed.
- (3) The *Duties Act 1997* does not apply to or in respect of any gift, devise or bequest made or to be made to the Authority.

**16 Private subsidiary corporations etc**

- (1) In this section:  
*private corporation* means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth formed in or outside New South Wales.  
*private subsidiary corporation* means a private corporation in which the Authority has a controlling interest.
- (2) The Authority may, but only with the approval of the Minister:
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations.
- (3) A private subsidiary corporation is not, and does not represent, the Crown.

## **Part 4 Transfers relating to property of government agencies**

### **17 Definitions**

In this Part:

*transfer date* means:

- (a) in relation to property included in Schedule 1 by order under section 19—the date of publication of the order in the Gazette or a later date specified in the order in respect of the property, or
- (b) in relation to property included in Schedule 1 by an amendment made by an Act—the date on which the amendment takes effect.

*transferor*, in relation to property, means the person or body in whom or which the property was vested immediately before the transfer date.

### **18 Transfer of property described in Schedule 1 to Authority**

- (1) On the transfer date relating to property described in Schedule 1, the property vests in the Authority for an estate in fee simple (or such other interest as is specified in the Schedule):
  - (a) without the need for any further conveyance, transfer, assignment or assurance, and
  - (b) subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the transfer date.
- (2) On the transfer date relating to property described in Schedule 1, the following provisions have effect:
  - (a) the rights or liabilities of the transferor in relation to the property become by virtue of this section the rights or liabilities of the Authority,
  - (b) all proceedings relating to the property commenced before the transfer date by or against the transferor or a predecessor of the transferor and pending immediately before the transfer date are taken to be proceedings pending by or against the Authority,
  - (c) any act, matter or thing done or omitted to be done in relation to the land before the transfer date 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 Authority,

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- (d) 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 that it relates to that property or those rights or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.
  - (3) Regulations may be made for or with respect to the conversion of references to the transferor in any document or class of document to references to the transferee as a consequence of any transfer of property under this Part.

**19 Transfer of additional property to Authority—amendment of Schedule 1**

- (1) The Governor may, by order published in the Gazette, amend Schedule 1 by inserting the description of any property.
- (2) Property is authorised to be included in Schedule 1 by order under this section only if it is property of a government agency (including vacant Crown land). Subject to section 18 (1) (b), this section does not prevent land, the fee simple in which is vested in Her Majesty, the Crown or a government agency, from being transferred by order under this section even if the land is subject to other interests.
- (3) Property is not authorised to be included in Schedule 1 by order under this section if it comprises, wholly or in part, any of the following:
  - (a) land that is reserved under the *National Parks and Wildlife Act 1974* as a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve or land that is acquired under Part 11 of the *National Parks and Wildlife Act 1974*,
  - (b) any area that is declared as a marine park under the *Marine Parks Act 1997*,
  - (c) any land that is reserved or dedicated under an Act for any purpose, being a reservation or dedication that can only be revoked by an Act,
  - (d) land reserved under Part 5 of the *Crown Lands Act 1989* unless the Minister for Lands has given concurrence to the transfer of the particular land identified by the Minister administering this Act.
- (4) Subject to the other provisions of this section, property may be transferred by order under this section despite any requirement of any other Act or law that relates to dealing with or disposing of the property.

**20 Effect of transfer of property under this Part**

- (1) No compensation is payable to any person or body in connection with the operation of this Part.
- (2) The operation of this Part 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.
- (3) The operation of this Part is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from a transferor is required.
- (5) No provision in a lease transferred under this section to the Authority is breached solely because the Authority sublets the property the subject of the lease to a government agency.

## **Part 5 Miscellaneous**

### **21 No duty payable in relation to agreements, vestings or transfers under Act**

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

- (a) a vesting or transfer of property effected under this Act or in accordance with arrangements entered into under this Act, or
- (b) anything certified by the Minister as having been done in consequence of such a vesting or transfer or under any such arrangements.

### **22 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **23 Savings, transitional and other provisions**

Schedule 2 has effect.

### **24 Amendment of other Acts**

The Acts specified in Schedule 3 are amended as set out in that Schedule.

### **25 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

State Property Authority Bill 2006

Schedule 1      Property transferred to Authority

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## **Schedule 1      Property transferred to Authority**

(Sections 18 and 19)

**Note.** On the enactment of this Act, this Schedule was blank.

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## **Schedule 2    Savings, transitional and other provisions**

(Section 23)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision 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 or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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## Schedule 3 Amendment of other Acts

(Section 24)

### 3.1 Aboriginal Land Rights Act 1983 No 42

#### Section 36 Claims to Crown lands

Insert after section 36 (15):

- (16) The definition of *claimable Crown lands* in subsection (1) is taken to include land vested in the State Property Authority that complies with paragraphs (a)–(e) of that definition and that was, immediately before it vested in that Authority, claimable Crown lands within the meaning of that definition.
- (17) The provisions of this section are modified as follows in relation to its application to land vested in the State Property Authority:
  - (a) subsection (4) (c) requires the Registrar to refer a copy of a claim in relation to the land to the Minister administering the *State Property Authority Act 2006* in addition to the other Ministers referred to in that paragraph,
  - (b) a reference in subsection (5) to the Crown Lands Minister granting a claim by making a transfer referred to in that subsection is to be read as the Crown Lands Minister granting a claim and requiring the State Property Authority to transfer the relevant land as referred to in that subsection,
  - (c) a reference in subsection (14) to a Crown Lands Minister is to be read as a reference to the State Property Authority,
  - (d) a reference in subsection (14) to Crown land is a reference to land vested in the State Property Authority that, immediately before it was vested in that Authority, was Crown land.
- (18) In accordance with a requirement by a Crown Lands Minister under subsection (5) (as modified by subsection (17) (b)), the State Property Authority is to transfer land vested in it in relation to which a claim has been granted by that Minister, subject to the taking of any action required to implement a condition imposed under subsection (5A) on the grant of the claim.

### **3.2 Native Title (New South Wales) Act 1994 No 45**

**[1] Section 104A Saving of native title rights and interests with respect to national parks and other reservations or dedications or declarations**

Insert after section 104A (1) (f):

- (g) an order under section 19 of the *State Property Authority Act 2006* that vests property in the State Property Authority.

**[2] Section 104A (3)**

Insert “, the *State Property Authority Act 2006*” after “*Fisheries Management Act 1994*”.

### **3.3 Public Finance and Audit Act 1983 No 152**

**Schedule 2 Statutory bodies**

Insert “State Property Authority” in appropriate order.