

Landcom Corporation Act 2001 No 129

[2001-129]



New South Wales

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Landcom Corporation Act 2001 No 129



New South Wales

An Act to establish Landcom as a statutory State owned corporation to exercise certain functions relating to development; to make consequential amendments to other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Landcom Corporation Act 2001*.

2 Commencement

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

3 Definitions

(1) In this Act:

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

Corporation means the statutory State owned corporation constituted by this Act.

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 and whether vested or contingent).

Ministerial Development Corporation means the Ministerial Development Corporation constituted by the *Growth Centres (Development Corporations) Act 1974*.

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

urban development includes the expansion, establishment and re-development of urban areas.

- (2) Words and expressions used in this Act and also the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act.

4 Notes

Notes included in this Act do not form part of this Act.

Part 2 Landcom

5 Establishment of Landcom as statutory SOC

- (1) There is constituted by this Act a corporation with the corporate name of Landcom.
- (2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the word "Landcom".

6 Principal objectives of Corporation

- (1) The principal objectives of the Corporation are as follows:
- (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in it,
 - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
 - (c) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
 - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,
 - (e) to undertake, or assist the Government in undertaking, strategic or complex urban development projects,
 - (f) to assist the Government in achieving its urban management objectives,
 - (g) to be a responsible developer of residential, commercial and industrial land.
- (2) Each of the principal objectives of the Corporation is of equal importance.
- (3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to the Corporation.

7 Functions of Corporation

- (1) The Corporation has the functions conferred or imposed on it by or under this or any

other Act or law.

- (2) The principal functions of the Corporation are:
 - (a) to undertake and participate in residential, commercial, industrial and mixed development projects, and
 - (b) to provide advice and services related to urban development, on a commercial basis, to government agencies and others.
- (3) Subsection (2) (b) does not affect the functions of the board of the Corporation under section 29 of the *State Owned Corporations Act 1989*.
- (4) The Corporation may also:
 - (a) provide facilities or services that are ancillary or incidental to its principal functions, and
 - (b) conduct any business or provide any service (whether or not related to its principal functions) that it considers will further its objectives.

8 Board of directors

- (1) The Corporation is to have a board of directors.
- (2) The board is to consist of 7 directors appointed by the Governor on the recommendation of the voting shareholders.
- (3) The voting shareholders are to consult with the portfolio Minister before recommending any person for appointment as a director.
- (4) The chief executive officer may be appointed as a director.
- (5) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the Corporation.
- (6) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the directors of the Corporation.
- (7) Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board, subject to subsection (8).
- (8) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 4 and 9 (1) of Schedule 8 to that Act, do not apply to the Corporation.

9 Chief executive officer

- (1) The chief executive officer of the Corporation is to be appointed by the board after consultation with the voting shareholders and the portfolio Minister.

- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders and the portfolio Minister.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.
- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The chief executive officer may delegate any functions of the chief executive officer to an employee of the Corporation, but this power is subject to any directions of the board.
- (6) The *Government Sector Employment Act 2013* (Part 6 included) does not apply to the chief executive officer.
- (7) Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer, subject to subsection (8).
- (8) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

10 Acting chief executive officer

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
 - (a) has all the functions of the chief executive officer and is taken to be the chief executive officer, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine after consultation with the voting shareholders.
- (4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office.
- (5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of the Corporation.

Part 3 Accountability

11 Statement of priorities to be provided by portfolio Minister

- (1) The portfolio Minister may provide to the board of the Corporation, from time to time, a written statement of priorities for the Corporation and its subsidiaries (if any).
- (2) A statement of priorities is to specify, in respect of any specified financial year or years:
 - (a) the urban management priorities for the Corporation and its subsidiaries, expressed in broad terms, as proposed by the portfolio Minister, and
 - (b) the projects, activities or outcomes to be undertaken or achieved by the Corporation as proposed by the portfolio Minister.
- (3) The portfolio Minister must provide the statement of priorities to the board no less than 2 months before the commencement of:
 - (a) the financial year to which the statement of priorities relates, or
 - (b) if the statement of priorities relates to more than one financial year, the first of those financial years.
- (4) Section 12 does not apply in respect of a statement of priorities unless it is provided to the board of the Corporation within the time required by subsection (3).

12 Implementation of statement of priorities

- (1) The board of the Corporation may decide to accept the statement of priorities provided by the portfolio Minister, but only with the approval of the voting shareholders.
- (2) A decision to accept the statement of priorities may be made subject to such conditions or modifications to the statement as are agreed between the board and the voting shareholders.
- (3) A decision not to accept the statement of priorities may be made by the board only with the approval of the voting shareholders.
- (4) If a decision is made not to accept the statement of priorities provided by the portfolio Minister, or to accept the statement subject to conditions or modifications, the voting shareholders must notify the portfolio Minister of that decision and the reasons for it.
- (5) In preparing a statement of corporate intent under section 21 of the *State Owned Corporations Act 1989* for any period to which a statement of priorities relates, the board is to have regard to the statement of priorities, to the extent to which that statement has been accepted by the board.

- (6) A copy of the statement of priorities is to be attached to the completed statement of corporate intent when it is laid before each House of Parliament under section 26 of the *State Owned Corporations Act 1989*, together with a copy of a statement prepared by the board that indicates:
 - (a) whether the statement of priorities has been accepted by the board, and
 - (b) any conditions or modifications to which that acceptance is subject.
- (7) The board is to provide to the portfolio Minister, within 6 months after the end of each financial year in respect of which a statement of priorities has been provided to the board, a report that:
 - (a) identifies the extent to which the priorities, projects, activities or outcomes set out in the statement of priorities, to the extent accepted by the board, have been undertaken or achieved by the Corporation in the financial year, and
 - (b) sets out the reasons for any failure to undertake or achieve those accepted priorities, projects, activities or outcomes.

13 Modification or revocation of acceptance of priorities

- (1) The board of the Corporation may at any time revoke or modify its acceptance of a statement of priorities provided by the portfolio Minister, but only with the approval of the voting shareholders.
- (2) If a decision is made by the board to revoke or modify its acceptance of a statement of priorities, the voting shareholders are to notify the portfolio Minister of that decision and the reasons for it.
- (3) A Minister is required to lay, or cause to be laid, before each House of Parliament a copy of a statement prepared by the board indicating the effect of the revocation or modification within 14 sitting days after the revocation or modification is made.

14 Environmental reporting indicators

- (1) The portfolio Minister is from time to time to adopt environmental reporting indicators, including environmentally sustainable development indicators, for use by the Corporation.
- (2) The indicators must include a methodology for making comparisons to international best practice in environmentally sustainable residential, commercial and industrial development.
- (3) Before adopting any environmental reporting indicators, the portfolio Minister:
 - (a) must cause notice of the proposed indicators to be published in a daily newspaper circulating throughout the State, and

- (b) must cause copies of the proposed indicators to be made available for public inspection on the Corporation's website and at each of the offices of the Corporation, and
 - (c) must allow a period of at least 30 days for members of the public to send written comments to the portfolio Minister in relation to the proposed indicators, and
 - (d) must take any such comments into consideration.
- (4) The Corporation must monitor its activities against the environmental reporting indicators and must compile data on those indicators.
 - (5) The Corporation is to publish an annual report that sets out the results of the monitoring referred to in subsection (4).
 - (6) Copies of the report are to be made available for public inspection on the Corporation's website and at each of the offices of the Corporation.

15 Acquisition and disposal of real property assets

- (1) The Corporation or any of its subsidiaries may not acquire or dispose of any real property asset that has a value exceeding \$30 million, or such alternative amount (if any) as is specified in the most recent statement of corporate intent of the Corporation, without the prior written approval of the voting shareholders.
- (2) For the purposes of subsection (1):
 - (a) the value of any real property asset to be acquired is the cost price of the asset, and
 - (b) the value of any real property asset to be disposed of is the book value or the consideration for the disposal, whichever is the greater.
- (3) In seeking the approval of the voting shareholders under this section, the Corporation or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act.
- (4) The voting shareholders may, by written notice, direct the Corporation or its subsidiaries not to dispose of any specified real property asset.
- (5) The requirements of subsection (1) do not apply in the following circumstances:
 - (a) if the acquisition or disposal is expressly authorised by the most recent statement of corporate intent of the Corporation,
 - (b) in such circumstances as may be specified in a written notice given to the Corporation or a subsidiary of the Corporation by the Treasurer.

- (6) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the Corporation or subsidiary in the circumstances or would apply to it in a clearly inappropriate manner.
- (7) The Corporation or any of its subsidiaries may not acquire or dispose of any real property asset in contravention of any requirements of the regulations under this Act.
- (8) Section 20X of the *State Owned Corporations Act 1989*, in its application to the Corporation, does not apply in respect of any real property asset.

Note—

Section 20X of the *State Owned Corporations Act 1989* provides for restrictions on the acquisition and disposal of fixed assets and investments and liabilities by a statutory state owned corporation.

- (9) In this section:

real property asset means any inventory asset that comprises a legal or equitable estate or interest in real property.

Part 4 Miscellaneous

16 Application of *State Owned Corporations Act 1989*

The provisions of this Act are in addition to and (except to the extent to which this Act provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

17 Transfer of specified assets, rights and liabilities

- (1) The Minister may, by order in writing, transfer to the Corporation such of the assets, rights and liabilities of the following corporations as are specified or referred to in the order:
 - (a) the New South Wales Land and Housing Corporation,
 - (b) the Ministerial Development Corporation.
- (2) Such an order may be made on such terms and conditions as are specified in the order.
- (3) Schedule 1 applies to a transfer under this section.

18 Transfer of staff

Schedule 2 has effect.

19 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.

20 (Repealed)

21 Savings, transitional and other provisions

Schedule 4 has effect.

22 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 Minister is to make arrangements for public comment on the Act and consider those comments as part of the review.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (4) 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.

Schedule 1 Transfer of assets, rights and liabilities

(Section 17 (3))

1 Application and interpretation

- (1) This Schedule applies to any transfer of assets, rights or liabilities under section 17.
- (2) In this Schedule, the person or body from which any assets, rights or liabilities are transferred is called the **transferor** and the person or body to which they are transferred is called the **transferee**.

2 Vesting of undertaking in transferee

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule 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 or a predecessor 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:

(i) the transferor, or

(ii) any predecessor of the transferor, or

(iii) the NSW Land and Housing Corporation (Landcom), or

(iv) the Business Land Group, or

(v) Landcom,

to the extent to which the reference relates to those assets, rights or liabilities, is taken to be, or 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 by which it is effected.

(5) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.

3 Date of vesting

An order under section 17 takes effect on the date specified in the order.

4 Consideration for vesting

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

liabilities are transferred.

5 State taxes not chargeable

State tax is not chargeable in respect of:

- (a) a transfer to which this Schedule 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).

6 Confirmation of vesting

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

Schedule 2 Transfer of staff

(Section 18)

1 Transfer of DUAP staff to Landcom

- (1) The Minister may, by order in writing, transfer such of the staff of the Department of Urban Affairs and Planning as are specified or referred to in the order to the Corporation.
- (2) The members of staff of the Department of Urban Affairs and Planning who are transferred to the Corporation by such an order are to be regarded for all purposes as having become employees of the Corporation, in accordance with the terms of the order, on a day specified in the order as being the day on which the transfer takes effect.

2 General saving of conditions of employment

- (1) A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained as a member of the staff of the Department of Urban Affairs and Planning.
- (2) However, nothing in this clause affects the application of section 36 (1) of the [State Owned Corporations Act 1989](#) to the Corporation. Accordingly, Part 7 of Chapter 2 of the [Industrial Relations Act 1996](#) does not apply to the Corporation or any subsidiary of the Corporation.

3 Saving of leave

A member of staff of the Department of Urban Affairs and Planning who is transferred

under this Schedule retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with the Department of Urban Affairs and Planning.

4 No payment out on transfer or dual benefits

- (1) A member of staff of the Department of Urban Affairs and Planning who is transferred under this Schedule is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the Department of Urban Affairs and Planning.
- (2) A person who is transferred under this Schedule is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 21)

Part 1 Preliminary

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.

Part 2 Provisions consequent on enactment of this Act

2 Acting chief executive officer

- (1) On the commencement of section 10:

- (a) the person who held the position of Chief General Manager of Landcom immediately before that commencement ceases to hold that position, and
 - (b) the person is taken to have been appointed under section 10 (1) to act in the office of chief executive officer of the Corporation.
- (2) A person who ceases to hold the position of Chief General Manager of Landcom because of this clause is not entitled to any remuneration or compensation because of the loss of that office.
- (3) The provisions of section 10 apply to a person who is taken to have been appointed to act in the office of chief executive officer under this clause.
- (4) Subject to section 10, Schedule 2 applies in respect of the person as if he or she had been transferred by order under that Schedule.

3 Special provisions relating to former senior executive officers

- (1) This clause applies to a person transferred by order under Schedule 2 who held an executive position under Part 2A of the *Public Sector Management Act 1988* immediately before the person was transferred (including a person to whom clause 2 of this Schedule applies).
- (2) Any such person is not entitled to exercise a right of return to the public sector under section 42R, or to seek compensation under section 42S, of the *Public Sector Management Act 1988*:
- (a) on ceasing to hold the executive position, or
 - (b) on ceasing to be employed by the Corporation.
- (3) This clause applies despite anything to the contrary in this Act.