

INDUSTRIAL DEVELOPMENT AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title of the Bill

Industrial Development Amendment Bill 1998

Objective of the Bill

The objective of the legislation is to amend the *Industrial Development Act 1963* (the Act) to:

- (a) enhance, increase flexibility in and clarify the powers of the corporation sole known as the Minister for Industrial Development of Queensland ("the Corporation") so that the powers adequately reflect the current objectives and practices of the Corporation;
- (b) provide an appropriate framework for the commercialised activities of the Property Services Group of the Department of Tourism, Small Business and Industry ("Property Services Group");
- (c) streamline the funds of the Corporation under the *Financial Administration and Audit Act 1977*;
- (d) remove obsolete provisions from the legislation; and
- (e) comply with National Competition Policy requirements.

Reasons for the Bill

- The commercialisation of the Property Services Group requires the procedures and powers in the existing legislation to be

amended and streamlined to provide a more cost and time efficient system for the provision of land for industrial, associated and ancillary purposes. It is necessary to clarify areas where doubts have previously arisen as to the powers of the Corporation to enter into transactions pursuant to the legislation for example, to enter into arrangements with investors where the ultimate end use of the land is to be for industrial purposes.

- The Act has been in place for a significant period of time and some of the provisions, although still within the Act, were to a large extent rendered obsolete by the creation of the Queensland Industry Development Corporation in 1985. These provisions require deletion.
- The concept of “industry” in the Act has become outdated and has given rise to some concern on a National Competition Policy basis. In addition, the role of the Property Services Group in the provision of land and services has expanded beyond the original concepts within the Act. The concept of “industry” needs to be expanded.
- The function of the Property Services Unit will often involve activities that are more governmental in nature rather than commercial. It has been and will continue to be the practice of the Corporation to hold, develop and deal with land in industrial estates on a long term strategic basis, rather than for commercial gain. The commercial activities provisions of the *Acts Interpretation Act 1954* will not cover all types of transactions to be entered into by the Corporation in this regard so that the Corporation needs to have specific power to enter into these types of dealings in land.
- The *Statutory Bodies Financial Arrangements Act 1982* applies to the Corporation. In the absence of specific powers under the Corporation’s own Act to enter into the types of transactions currently undertaken and contemplated or necessary in the future, the processes under the *Statutory Bodies Financial Arrangements Act 1982* would need to be followed. In practice this can negatively impact on timing of transactions and reduce the ability of the Corporation to deal in or encourage the development of industry in the State.

Achievements of Policy Objectives

The Bill contains provisions which will enable the Corporation to deal with all types of land without the need to seek Governor-in-Council approval on each occasion, and generally to enter into arrangements without Governor-in-Council approval being necessary. The powers of the Corporation to enter into transactions for industrial purposes are to be put beyond question and expanded as appropriate to take account of the changing face of “industry” and the needs of industry for infrastructure and other services. This will promote greater flexibility in the operations of the Property Services Group and lessen the administrative burden to government.

The Bill contains a broader definition of “industry” and introduces a broader concept of “industrial purposes” which satisfies National Competition Policy requirements and the need for the Minister to be able to deal on a wider basis with modern needs.

Reasonable Alternative Ways of Achieving Policy Objectives

The Minister could seek to rely on provisions of the *Land Act 1994* and the *Acts Interpretation Act 1954* rather than the Bill in relation to dealings in land. However, this approach would not take account of existing land holdings, mortgages and leases held by the Corporation. It also reduces the required ability of the Property Services Group, through the Corporation, to ensure land is available for industrial purposes and to determine or monitor priority of uses for industrial land within the State, promote the orderly establishment and expansion of industry and respond quickly to opportunities for industrial development in the State.

Some of the functions of the Corporation do not clearly fall within the meaning of “commercial activities” within the Acts Interpretation Act. To avoid arguments arising as to the application of those commercial activities provisions where the functions to be undertaken are more of a government nature and to otherwise avoid the potential limitations of the general law in the case of any powers to be exercised by the Corporation which are not squarely within the functions administered by the Corporation, the specific power within the Act to carry out such activities is needed.

The ability of the Corporation to act in accordance with the Corporation’s own powers under the Act rather than being obliged to seek the Treasurer’s approval and otherwise comply with all the relevant procedures in the

Statutory Bodies' Financial Arrangements Act 1982 more effectively enables the meeting of customers' expectations quickly and efficiently and the achievement of the government's objectives.

If industry customers were to be obliged to acquire land from government directly pursuant to the Land Act, the loss of flexibility and speed of transactions available to the Corporation under the Act would result in opportunities for industrial development being missed because of the restrictions in the *Land Act 1994* in providing land to non- government persons without competition.

Assessment of Administrative Cost to the Government

It is expected that there will be no additional administrative costs to the State arising from this Bill and that savings in administrative costs will result from the commercialisation of the Property Services Group, reduction in the requirement to obtain Governor-in-Council approvals and from having one fund replace the two funds presently used.

Further, the commercialisation of the Property Services Unit provides for monies to be returned to the government.

Consistency with Fundamental Legislative Principles

Provisions which did not comply with Fundamental Legislative Principles have been omitted from the Act. Such provisions gave the Corporation power to hold securities which did not require compliance with other relevant legislation and which overrode the rights of other persons. The provisions of the Bill are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Consultation

The following Government Departments were consulted in relation to the proposed amendments to the Act:

Department of the Premier and Cabinet

Queensland Treasury

Department of Justice

Department of Economic Development and Trade

Department of Natural Resources

Department of Public Works and Housing

Department of Local Government and Planning

Notes on Clauses

Short Title

Clause 1 sets out the Short title of the Bill.

Commencement

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Act Amended

Clause 3 states that the *Industrial Development Act 1963* is amended.

Replacement of s3 (Interpretation of Terms)

Clause 4 omits Section 3 entitled “Interpretation of Terms” and replaces it with a new section entitled “Definitions”.

The definitions for “advance”, “applicant”, “advance by way of loan”, “period of loan”, “repayment” and “redemption” are omitted. These terms were made obsolete by the *Queensland Industry Development Act 1985* which provided for the Queensland Industry Development Corporation to take over the power to make advances and give guarantees for industrial purposes from 1 July 1986. New Section 28 contains transitional provisions to deal with any outstanding advances or guarantees made by the Corporation prior to that date.

This clause also omits the definition of “board” as it is no longer relevant. The Industries Assistance Board was abolished by the *Queensland Industry Development Corporation Act 1985*.

The definition of “director” has been omitted as it is now obsolete. All

references to the director have been removed from the Act.

A definition for “ancillary industry” is inserted to clarify the power of the Corporation to deal in land for purposes ancillary to industry, for example, providing land for food outlets or professional services on the Corporation’s industrial estates.

The definition of “corporation” has been omitted to remove terminology that was inconsistent with the Acts Interpretation Act 1954 and arguably limited the Corporation’s power to deal with corporate entities which did not fall within the defined term. The provisions of Section 5 have been adopted to provide the new definition.

A definition for “deal” is inserted to simplify the terminology in the Act by providing one defined term which can be used to describe various powers of the Corporation in relation to land and other property.

A definition for “hazardous contaminant” is inserted for the purposes of the definition of “deal” with land and other property. It is defined by reference to its meaning in the *Environmental Protection Act 1994*, Schedule 4. The full definition appears in the footnote.

A definition for “industrial purposes” is inserted to cover the concepts of industry and ancillary industry. The term “industrial purposes” was previously used in the Act but was not defined.

The definition of “industry” has been replaced with a new definition which is not focused on manufacturing and has been expanded to accommodate concepts not traditionally associated with the concept of industry. The removal of the power of the Governor-in-Council to add categories to the meaning of “industry” ensures National Competition Policy requirements and fundamental legislative principles are complied with.

A definition for “land” is inserted to clarify previous ambiguities in the Act in relation to the Corporation’s powers to deal with land only, land and improvements or improvements only in the exercise of various powers.

A definition for “remediate” is inserted to refer to rehabilitating, restoring or taking other action to prevent or minimise serious environmental harm to land or other property caused by a hazardous contaminant. This definition is based on the definition of “remediate” in the *Environmental Protection Act 1994* but is expanded to include “other property” as well as land, giving the Corporation the power to remediate buildings where necessary.

A definition for “serious environmental harm” is inserted which defines the term by reference to its meaning in the *Environmental Protection Act 1994*, Section 17. The full definition appears in the footnote.

Amendment of S5 (Corporation of the Minister)

Clause 5 omits from subsection (2)(b) of Section 5 “under and within the meaning of this Act” and replaces it with “responsible for administering this Section” to reflect current drafting practice.

Subsections (3), (4) and (5) of Section 5 are omitted. These subsections contained transitional provisions which were necessary at the commencement of the Act in 1963. New Section S28 contains transitional provisions for the current legislation.

Subsection (6) of Section 5 has been amended to omit the powers of the Corporation which are now contained in new Section 6.

Insertion of new S5A

Clause 6 inserts a new Section 5A which accurately reflects the present functions of the Corporation and which will enhance the flexibility of the Corporation and streamline its administration.

Amendment of S6 (Functions of the Corporation)

Clause 7 omits the heading of Section 6 and inserts a new heading to reflect the new content of Section 6.

This clause also omits subsections (1) and (2) of Section 6 which contained the functions and powers of the Corporation. These provisions no longer reflect the current practices and objectives of the Corporation. The removal of the necessity for the Corporation to seek Governor-in-Council approval prior to carrying out specified functions will provide greater flexibility for the Corporation and lessen the government’s administrative burden.

New subsections (1), (2), (2A), (2B) and (2C) of Section 6 are inserted which give the Corporation the powers necessary to carry out its current functions as specified in new Section 5A.

Subsection (1) of Section 6 gives the Corporation the powers of an individual and provides examples of such powers.

Subsection (2) of Section 6 gives the Corporation further powers which have been specifically included to ensure the Corporation has the powers without the need to rely on the *Statutory Bodies' Financial Arrangements Act 1982*.

Subsection (2A) of Section 6 states that the Corporation may only exercise a power under subsection (2)(a) or (b) if the Corporation has considered a matter prescribed by regulation.

Subsection (2B) of Section 6 states that if the Corporation considers it appropriate for doing anything under subsection (2), the Corporation may take any form of security or charge over land or other property.

Subsection (2C) of Section 6 is inserted to put beyond doubt that the Corporation has the power to charge a fee for dealing in land or other property, providing services or otherwise exercising its powers.

In subsections (3) to (7) of Section 6 “Minister” is omitted and replaced with “corporation” for consistency throughout the Act.

In Section 6(3) “Minister’s authority pursuant to his or her” is omitted and replaced with “corporation’s authority under the corporation’s power” to reflect current drafting practice.

In subsection (6) of Section 6 “by order in council” is omitted and replaced with gazette notice in accordance with the Statutory Instruments Regulation 1992.

In subsection (8) of Section 6 “ by order in council pursuant to” is omitted and replaced with “under” to reflect current drafting practice.

A new subsection (9) is inserted which clarifies that “power” in Section 6 includes legal capacity.

Omission of ss6A and 6B

Clause 8 omits Section 6A and 6B. These sections are now obsolete as it is the current practice of the Corporation to rely on the provisions of the *Land Act 1994* for the issuing of leases or deeds of grant to the Corporation.

Amendment of s6C (Sale of surplus land)

Clause 9 omits from Subsection (2) of Section 6C “subject to the condition imposed by subsection (3), the corporation may”. These words are obsolete as subsection (3) is omitted. “The corporation may, on sound commercial terms” is inserted to provide that all sales by the Corporation of “surplus land”, as defined, must now be on sound commercial terms. S6C(2)(c) is omitted and replaced with “by other means prescribed under a regulation”. In addition to the Corporation’s power to sell surplus land pursuant to subsections (a) and (b) it can also sell surplus land by other means prescribed by regulation. Previously, Governor-in-Council by Order in Council approval was required. This change is made to reflect current legislative practice and maintains the approval system for the means of selling surplus land.

S6C(3) is omitted. This section made each sale pursuant to S6(2) subject to Governor-in-Council approval. The removal of the necessity to seek Governor-in-Council approval will provide greater flexibility for the Corporation and lessen the government’s administrative burden.

S6C(4) is omitted. This subsection is obsolete as it referred to the Governor-in-Council approval in subsection (3).

Replacement of ss7 to 22

Clause 10 omits S7 which specified the functions and duties of the director. This section is now obsolete as all references to the director have been omitted from the Act.

Section 8 is omitted and replaced with a new Section 7 which is consistent with current drafting practice for providing delegation authorities. This section allows the Corporation to delegate its powers to the chief executive who may subdelegate those powers to an appropriately qualified officer or employee as defined in this section.

Section 9 which contained provisions relating to the powers of the Director and the delegation of these powers is omitted as it is now obsolete, all references to the Director having been removed from the Act.

Section 10 which conferred on the Director the powers of a Commission of Inquiry under the *Commissions of Inquiry Act 1950* is omitted. This section is now obsolete as all references to the Director have been omitted from the Act and it is not appropriate for such powers to be included in the

Act.

Section 11 and Section 12 which deal with the Industries Assistance Board are omitted. These sections are now obsolete as the Industries Assistance Board ceased to exist on 1 July 1986 pursuant to the provisions of the *Queensland Industry Development Act 1985*.

Sections 13 to 22 are omitted. These sections contained provisions dealing with advances and guarantees provided by the Corporation under the Act. These sections are now obsolete. Since the introduction of the *Queensland Industry Development Act 1985* the Corporation has not provided such financial assistance. In respect of any advances or guarantees which still exist, transitional provisions in Section 28 provide for the continued operation of these sections.

Amendment of s23 (Security)

Clause 11 omits “Minister” in Section 23 and replaces it with “Corporation” for consistency throughout the Act.

Replacement of s24 (Minister may provide land for industrial purpose)

Clause 12 omits Section 24. Section 24(a) is now obsolete as its intent (to allow the Corporation to sell land and improvements and provide vendor finance) is now contained in the new Section 6. Section 24(b) is replaced by new Section 24 which is drafted to reflect current drafting practice. This section provides that the Corporation may enter into an arrangement with a person for a grant of an appropriate lease under the *Land Act 1994* of unallocated state land to establish, carry on or expand an undertaking for an industrial purpose.

Replacement of ss25-26

Clause 13 omits Sections 25, 25A and 25B which established the Assistance to Industries Fund, the Industrial Estates Construction Fund and the Estates Maintenance Fund. The Assistance to Industries Fund has ceased to exist. The Industrial Estates Construction Fund and the Estates Maintenance Fund have been amalgamated into one fund known as the Estates Construction Fund established under new Section 25 of the Bill.

The administration of only one fund will streamline the Corporation's administrative functions.

Section 25C which dealt with the repayment of appropriations is omitted. It is now obsolete as the terms of an appropriation would be determined at the time of the appropriation.

Section 25 is inserted. Subsections (1) and (2) of Section 25 provides that the Corporation must establish and keep a fund called the Estates Construction Fund which is a fund of the trust and special funds under the *Financial Administration and Audit Act 1977*. Subsection (3) specifies the amounts to be paid into the Estates Construction Fund. The monies previously paid into two separate funds established under the previous Section 25A and Section 25B of the Act will be paid into this fund. Subsection (4) specifies the amounts to be paid out of the fund. In subsection (5) the words "borrowing" and "lease" are defined to clarify their meaning within Section 25.

Section 26 which provided wide general powers to the Governor-in-Council under the Act is omitted. The Governor -in Council is given the power to make regulations in line with current legislative practice.

Replacement of s27- 29

Clause 14 omits Section 27 which provided the Governor-in-Council with the power to make Regulations under the Act. The Governor-in-Council's regulation making power is replaced in new S27 to reflect current drafting practice.

Section 28 which provided for the publication of proclamations, orders in council and regulations has been omitted. This section is now obsolete as a result of the *Statutory Instruments Act 1992*.

Section 28 is inserted. It is a transitional section to deal with an "arrangement" as defined, entered into by the corporation and still in existence immediately prior to the commencement of this section. This section provides that the arrangement continues to have effect after the commencement of this section.

Section 29 which provided for an annual Report to be prepared is omitted. This section has been made obsolete by the *Financial Administration and Audit Act 1977*.

Insertion of new ss30 and 31

Clause 15 inserts new Section 30 which is a transitional provision to facilitate the establishment of the Estates Construction Fund.

New section 31, is inserted to provide that when the Act is reprinted, the provisions of the Act will be numbered and renumbered as permitted by the *Reprints Act 1992*.