

SOUTH AUSTRALIA

ASER (RESTRUCTURE) ACT 1997

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ASER (RESTRUCTURE) ACT 1997

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ASER (Restructure) Act 1997 No. 38 of 1997
[Assented to 17 July 1997]¹

¹ Came into operation (except Pt. 4 and s. 27) 5 February 1998: *Gaz.* 5 February 1998, p. 862; Pt. 4 and s. 27 came into operation 30 June 1998: *Gaz.* 25 June 1998, p. 2648.

An Act to provide for restructuring the ASER property holdings and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *ASER (Restructure) Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**ASER**" means Aser Nominees Pty Ltd (ACN 008 024 486) in its own capacity and in its capacity as trustee of the Aser Property Trust;

"**ASER Property Trust**" means a trust established by deed dated 15 November 1983 between Thomson Simmons Nominees Pty Ltd as settlor and Calpes Pty Ltd as trustee;

"**casino site**" means the part of the Site defined by regulation as the casino site;

"**common area**" means the parts of the Site defined by regulation as the common area;

"**Corporation**" means the ASER Services Corporation;

"**equipment**" includes conduits, cables and pipes;

"**head lease**" means a head lease of the Site or part of the Site;

"**occupier**" of a subsidiary site means—

- (a) if the subsidiary site is not subject to a lease—the owner of the site in fee simple; or
- (b) if the subsidiary site is subject to a lease—the lessee or, if there is a head lease and a sublease or series of subleases, the lessee under the head lease;

"**section**" of the Site means—

- (a) the common area; or
- (b) a subsidiary site; or
- (c) the casino site;

"**shared facilities**"—*see section 17*;

"**Site**"—*see section 5*;

"**stakeholder**" means an occupier of a subsidiary site;

"**subsidiary site**" means a part of the Site defined by regulation as a subsidiary site (but does not include the casino site).

Act to apply notwithstanding the Real Property Act 1886

4. This Act has effect despite the provisions of the *Real Property Act 1886*.

PART 2
THE SITE AND ITS CONSTITUENT PARTS

DIVISION 1—THE SITE

The Site

5. (1) The Site is the land defined by regulation as the Site.

(2) Except by enlargement under this Division, the Site cannot extend beyond the boundaries of the land comprised in Certificate of Title Register Book Volume 5101 Folio 624 and Volume 5191 Folio 690 (or a Certificate or Certificates of Title issued in substitution for those Certificates or either of them).

Enlargement of the Site

6. (1) The Governor may, by regulation, enlarge the Site by adding the land, to be defined in the regulation, into which the car park located on the northern side of the Site encroaches from the boundaries of the Site.

(2) Land added to the Site under subsection (1) vests in TransAdelaide for an estate in fee simple.

**DIVISION 2—THE SUBSIDIARY SITES, THE CASINO SITE
AND THE COMMON AREA**

Definition of subsidiary sites, casino site and common area

7. (1) The Governor may, by regulation, define the boundaries of—

- (a) the subsidiary sites; and
- (b) the casino site; and
- (c) the common area.

(2) A regulation under subsection (1) may only be made—

- (a) by agreement between ASER and TransAdelaide; or
- (b) if they fail to reach agreement—in accordance with a determination made by an arbitrator appointed for the purpose by the Treasurer.

(3) The *Commercial Arbitration Act 1986* applies to an arbitration under subsection (2)(b).

(4) The casino site must include the premises licensed as a casino.

(5) A regulation cannot be made under this section defining or redefining the boundaries of a particular site after a date fixed by proclamation as the cut-off date for the site in question.

PART 3
SEVERANCE OF LEASE

Severance of head lease

8. The regulations may—

- (a) authorise the severance of a head lease covering two or more sections of the Site into separate leases for each section of the Site covered by the head lease; and
- (b) provide for the apportionment of the rent payable under the head lease between the separate leases on a fair and reasonable basis agreed between TransAdelaide and ASER or, if they fail to agree, on a fair and reasonable basis determined by the Treasurer; and
- (c) provide that the terms and conditions of the head lease (including those conferring rights and powers) are to be reflected in the leases formed by the severance subject to fair and reasonable variations agreed between TransAdelaide and the head lessee or, if they fail to agree, on a fair and reasonable basis determined by the Treasurer.

PART 4¹
MANAGEMENT OF THE COMMON AREA

DIVISION 1—THE CORPORATION

Establishment of the Corporation

9. A body corporate to be known as the ASER Services Corporation is established.

General legal capacity of the Corporation

10. The Corporation has the powers of a natural person of full age and capacity so far as those powers are capable of being exercised by a body corporate.

The Corporation's operations, management and procedures

11. (1) Regulations may be made governing—

- (a) the Corporation's operations; and
- (b) the management of its activities; and
- (c) the internal procedures of the Corporation.

(2) In the absence of a regulation governing a particular matter, the Corporation will itself determine how a particular matter is to be dealt with.

Membership of Corporation

12. (1) Each stakeholder is a member of the Corporation.

(2) A stakeholder has the voting rights at a meeting of the members of the Corporation fixed by regulation.

(3) The voting rights attach to the stakeholder so that—

- (a) if there is a change in the identity of the stakeholder, the voting rights automatically attach to the new stakeholder without transfer; and
- (b) the voting rights cannot be alienated in any other way.

Meetings of the members

13. (1) A member of the Corporation may attend a meeting of the Corporation personally or by proxy.

(2) A quorum at a meeting of the Corporation is to be constituted as required under the regulations and no business may be transacted at a meeting unless a quorum is present.

(3) A decision carried by a majority of the votes cast by the members present personally or by proxy at a meeting of the Corporation is a decision of the Corporation.

¹ Part 4 has not been brought into operation.

DIVISION 2—LIMITATION ON LIABILITY**Limitation of liability**

14. (1) *The Corporation must keep itself insured to an extent fixed by the regulations against liabilities of specified classes.*

(2) *If the Corporation incurs a liability against which it is required to be insured under the regulations, the Corporation's liability is limited to the amount for which the Corporation was (or ought to have been) insured in respect of liabilities of the relevant class.*

DIVISION 3—THE COMMON AREA**Common area**

15. (1) *The common area is to be under the custody and control of the Corporation.*

(2) *The Corporation must exercise its custody and control for the benefit of the stakeholders and the public.*

(3) *Despite subsection (2)—*

- (a) *the Corporation must recognise and allow a stakeholder to exercise any rights in respect of the common area or the shared facilities that are appurtenant to a lease of a subsidiary site; and*
- (b) *the Corporation may prevent or restrict public access to a part of the common area or to machinery, plant or equipment in the common area if authorised to do so by the Minister.*

Corporation's obligation to maintain common area

16. *The Corporation must—*

- (a) *maintain the common area in good condition; and*
- (b) *keep the common area well lit; and*
- (c) *make reasonable provision for the safety of persons and property in the common area.*

DIVISION 4—THE SHARED FACILITIES AND BASIC SERVICES**The shared facilities and basic services**

17. (1) *The shared facilities are—*

- (a) *machinery, plant and equipment (whether situated in the common area or on a subsidiary site) which was, as at the commencement of this Act, used or available for use by two or more stakeholders for obtaining the basic services;*
- (b) *the facilities (whether situated in the common area or on a subsidiary site) identified as shared facilities under the regulations; and*
- (c) *any other facilities that are to be provided by the Corporation for the benefit of the stakeholders by unanimous agreement of the stakeholders.*

(2) A regulation cannot be made for the purposes of subsection (1)(b) after a date fixed by proclamation for the purposes of this subsection.

(3) A **basic service** is—

- (a) the provision of electric power (including emergency electric power);
- (b) a fire protection service;
- (c) the provision of chilled water for use in air conditioning;
- (d) waste water disposal.

Corporation's obligation to provide basic services

18. The Corporation must, at the request of a stakeholder, provide basic services on reasonable terms and conditions.

Property in shared facility

19. (1) The shared facilities are chattels and are capable of being acquired, owned, dealt with and disposed of as such.

(2) A shared facility does not merge with the realty or a leasehold estate whatever the degree of annexation may be.

(3) The property in all shared facilities is vested in the Corporation.

Corporation's obligation to provide and maintain shared facilities

20. (1) The Corporation must provide and maintain the shared facilities for the benefit of all stakeholders.

(2) The Corporation may by means of agents or contractors—

- (a) enter a subsidiary site at any reasonable time (with any necessary vehicles and equipment) for the purpose of carrying out operational or maintenance work; and
- (b) carry out operational or maintenance work.

(3) **Operational or maintenance work** is work (which may consist of or include excavation, cutting into a building or structure or the partial demolition of a building or structure) reasonably necessary for—

- (a) the proper operation of the shared facilities; or
- (b) the maintenance, renewal, repair, replacement or removal of shared facilities.

(4) In carrying out operational or maintenance work, the Corporation must attempt to keep disturbance to stakeholders to a minimum.

(5) A person must not obstruct operational or maintenance work under this section.

Maximum penalty—\$2 500.

DIVISION 5—COMPULSORY CONTRIBUTIONS***Budget of income and expenditure***

21. (1) *The Corporation must prepare a budget of income and expenditure for each financial year in respect of its activities.*

(2) *The Corporation may prepare one or more supplementary budgets of income and expenditure for a particular financial year in respect of its activities.*

(3) *The budget must fix the amount that is to be raised by compulsory contributions (the **budgeted income from compulsory contributions**) for the relevant financial year and a supplementary budget may increase or decrease that amount.*

(4) *The budget and each supplementary budget must be submitted to the Treasurer for approval—in the case of the budget at least 2 months before the commencement of the financial year to which it relates.*

(5) *The Treasurer may approve the budget or a supplementary budget with or without amendment.*

Compulsory contributions

22. (1) *The budgeted income from compulsory contributions for each financial year (as fixed in the budget or a supplementary budget for the relevant financial year approved by the Treasurer) is to be raised by levying contributions from stakeholders on the relevant basis.*

(2) *The relevant basis of contribution is—*

- (a) *in the first instance—the basis of contribution fixed by the regulations; or*
- (b) *if the Corporation by a vote of 75% or more of the total number of votes exercisable by all members of the Corporation decides to change the basis of contribution—the basis of contribution last fixed by the Corporation.*

(3) *The relevant basis of contribution—*

- (a) *may provide for contributions based in whole or part on the extent of usage of the services provided by the Corporation by means of the shared facilities; and*
- (b) *may provide for separate contributions in relation to different aspects of the Corporation's responsibilities; and*
- (c) *may provide for the payment of interest (which may be at a punitive rate) for non-payment or late payment of a contribution.*

(4) *The Corporation may recover contributions (including interest) as a debt due from the relevant stakeholder.*

(5) *If a contribution due from a stakeholder is in arrears, the Corporation may, while the contribution remains in arrears, discontinue the provision of a service to the stakeholder.*

Exception—

The Corporation may not discontinue the provision of a service under this subsection if the discontinuance would create or increase risk of physical damage to property.

DIVISION 6—ACCOUNTS AND AUDIT

Accounts

23. (1) *The Corporation must keep proper accounts of its financial affairs.*

(2) *The Corporation must comply with the requirements and standards applicable to a public company under the Corporations Law in relation to the keeping of its accounts.*

Audit

24. (1) *The Corporation must, within 6 months after the end of each financial year, have its accounts audited by a registered company auditor.*

(2) *The audited accounts of the Corporation must be laid before the next meeting of members of the Corporation.*

DIVISION 7—ENFORCEMENT OF CORPORATION'S OBLIGATIONS

Appointment of administrator

25. (1) *If the Corporation fails to perform obligations or carry out responsibilities under this Act, a stakeholder may apply to the Supreme Court for the appointment of an administrator under this section.*

(2) *If satisfied that the appointment of an administrator is justified, the Supreme Court may appoint an administrator—*

(a) *at a remuneration fixed by the Court; and*

(b) *on other terms and conditions fixed by the Court.*

(3) *An administrator appointed under this section—*

(a) *is entitled to possession and control of the property of the Corporation and property in the Corporation's custody or control; and*

(b) *may exercise the powers and carry out the duties of the Corporation under this or any other Act to the extent authorised by the Supreme Court.*

(4) *While an appointment remains in force under this section, the powers and functions vested in the administrator under the terms of the appointment are exercisable only by the administrator.*

(5) *An administrator may resign by leave of the Supreme Court, and may be removed from office by the Supreme Court on its own initiative or on application by a stakeholder.*

(6) *The costs of the administration, including the administrator's remuneration, are to be paid out of the funds of the Corporation.*

**PART 5
MISCELLANEOUS**

Substitution of head lease

26. (1) A new head lease may be substituted for the present head lease over any subsidiary site without surrender or termination of any underlease.

(2) On substitution of the new head lease, the underleases automatically attach to the new head lease.

(3) An **underlease** includes any agreement conferring rights of possession or occupancy that derive from the head lease.

Winding up of the Corporation¹

27. (1) *The Corporation may be wound up in the same way as a company incorporated under Division 1 of Part 2.2 of the Corporations Law.*

(2) *On the winding up of the Corporation—*

(a) *the common area vests in the Crown for an estate of fee simple; and*

(b) *the Crown must recognise and allow a stakeholder to exercise any rights in respect of the common area or the shared facilities that are appurtenant to a lease of a subsidiary site; and*

(c) *the Crown is not subject to any other obligation imposed on the Corporation under this Act.*

Exemption from stamp duty

28. Stamp duty is not payable on any of the following instruments if lodged for stamping within 1 year after the commencement of this Act:

(a) an instrument under which ASER surrenders a lease of the Site or part of the Site that it holds from TransAdelaide;

(b) a lease of the Site or part of the Site granted by TransAdelaide to ASER;

(c) an instrument under which ASER Investments Pty Ltd surrenders an underlease of part of the Site to ASER;

(d) an instrument under which AITCO Pty Ltd surrenders a licence conferring rights of occupation over part of the Site that it holds from Aser Investments Pty Ltd;

(e) an instrument under which ASER Investments Pty Ltd surrenders a licence conferring rights of occupation over part of the Site that it holds from ASER.

¹ S. 27 has not been brought into operation.

Effect of things done under Act

29. Nothing done under this Act—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a civil or criminal wrong.

Interaction between this Act and other Acts

30. (1) The Treasurer may, by instrument in writing made within 1 year after the commencement of this Act, exempt the creation of an interest in or a dealing with the Site under this Act from—

- (a) the *Land and Business (Sale and Conveyancing) Act 1994*; or
- (b) the *Retail Shop Leases Act 1995*; or
- (c) Part 4 of the *Development Act 1993*.

(2) If the creation of an interest in or a dealing with the Site is exempt from Part 4 of the *Development Act 1993*, an application under section 2231d of the *Real Property Act 1886* for the division of land in consequence of the creation of the interest or the dealing need not be accompanied by a certificate under Part 4 of the *Development Act 1994*.

Regulations and proclamations

31. (1) The Governor may make regulations for the purposes of this Act.

(2) A regulation may impose a penalty not exceeding \$2 500 for contravention of or non-compliance with the regulation.

(3) The Governor may make proclamations for the purposes of this Act.