

South Australia

ASER (Restructure) Act 1997

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

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Act to apply notwithstanding the *Real Property Act 1886*

Part 2—The Site and its constituent parts

Division 1—The Site

- 5 The Site
- 6 Enlargement of the Site

Division 2—Casino site, the subsidiary sites and the common area

- 7 The casino site
- 7A The subsidiary sites and the common area

Division 3—Development by stakeholders

- 7B Development of subsidiary sites

Division 4—Statutory rights of support

- 7C Statutory rights of support

Part 3—Severance of lease

- 8 Severance of head lease

Part 4—The Corporation and its functions

Division 1—The Corporation

- 9 Establishment of the Corporation
- 10 General legal capacity of the Corporation
- 11 The Corporation's operations, management and procedures
- 12 Membership of Corporation
- 13 Meetings of the members

Division 2—Insurance

- 14 Insurance

Division 3—The common area

- 15 Common area
- 16 Corporation's obligation to maintain common area

Division 4—The shared facilities and basic services

- 17 The shared facilities and basic services
- 18 Corporation's obligation to provide basic services
- 19 Property in shared facility
- 20 Corporation's obligation to provide and maintain shared facilities

Division 4A—Other functions

- 20A Riverbank Precinct Master Plan
- 20B Adjacent facilities

Division 5—Compulsory contributions

- 21 Budget of income and expenditure
- 22 Compulsory contributions

Division 6—Accounts and audit

- 23 Accounts
- 24 Audit

Division 7—Enforcement of Corporation's obligations

- 25 Appointment of administrator

Part 5—Miscellaneous

- 26 Substitution of head lease
- 27 Winding up of the Corporation
- 28 Exemption from stamp duty
- 29 Effect of things done under Act
- 30 Interaction between this Act and other Acts
- 31 Regulations and proclamations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

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;

special resolution means a resolution passed at a general meeting of the Corporation by a number of votes equivalent to at least 75% of the total number of votes exercisable by the members of the Corporation;

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).

4—Act to apply notwithstanding the *Real Property Act 1886*

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

5—The Site

- (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).

6—Enlargement of the Site

- (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—Casino site, the subsidiary sites and the common area

7—The casino site

- (1) The casino site is the part of the Site defined by regulation as the casino site.
- (2) The casino site must include the premises licensed as a casino.
- (3) A regulation redefining a common boundary between the casino site and the common area or a subsidiary site may only be made—
 - (a) in the case of a common boundary between the casino site and the common area—with the agreement of all stakeholders;
 - (b) in the case of a common boundary between the casino site and a subsidiary site—with the agreement of the stakeholder occupying the site.

7A—The subsidiary sites and the common area

- (1) The subsidiary sites and the common area are (subject to this section) the parts of the Site respectively defined by regulation as the subsidiary sites and the common area as at the commencement of this section.
- (2) The Corporation may, by notice in the Gazette, redefine the boundaries of a subsidiary site or the common area—but not so as to affect a common boundary with the casino site or to include land outside the Site.
- (3) However—
 - (a) a boundary of the common area may only be altered with the agreement of all of the stakeholders; and
 - (b) a boundary of a subsidiary site may only be altered with the agreement of the stakeholder occupying the site.

Division 3—Development by stakeholders

7B—Development of subsidiary sites

- (1) A stakeholder may, with the necessary approvals, develop the stakeholder's subsidiary site.
- (2) The necessary approvals are—
 - (a) any authorisation or approval required under the *Development Act 1993*; and
 - (b) if the subsidiary site is occupied under a lease—any authorisation or approval required under the lease; and
 - (c) if the development will require support from another subsidiary site—the approval of the occupier¹ of the other subsidiary site; and

- (d) if the development encroaches on the common area—the Corporation's approval.

Note—

- 1 See definition of *occupier* in section 3.

Division 4—Statutory rights of support

7C—Statutory rights of support

- (1) Statutory rights of support exist between the relevant sites so far as the support may be necessary for—
- (a) buildings and structures existing as at the commencement of this section; and
 - (b) buildings and structures lawfully erected, or to be erected, after the commencement of this section; and
 - (c) buildings and structures (whether existing at the commencement of this section or erected later) lawfully modified, or to be modified, after the commencement of this section.
- (2) The rights of support exist in favour of the occupiers of a dominant site and are enforceable against the owner and occupiers of a servient site.
- (3) The Supreme Court may make orders (including an order in the nature of a mandatory injunction) for the enforcement of rights under this section.
- (4) For example, the occupier of a servient site may be required to permit the construction or installation on the site of appropriate foundations or structural supports to enable the construction or reinstatement of a building or structure on a dominant site.
- (5) The Supreme Court may make an order under this section—
- (a) on application by the occupier of a dominant site; or
 - (b) on application by the Corporation in its own right as the occupier of the common area or on behalf of the occupier of a subsidiary site.
- (6) In this section—

dominant site means a relevant site for the benefit of which rights of support exist under this section;

occupier of a relevant site means—

- (a) for the common area—the Corporation;
- (b) for a subsidiary site—the stakeholder or a person who derives rights of occupation from the stakeholder under a sub-lease or a series of subleases;

relevant site means—

- (a) a subsidiary site (including all buildings and structures on the subsidiary site);
or
- (b) the common area (including all buildings and structures on the common area);

servient site means a relevant site from which support is required for an existing or proposed building or structure.

Part 3—Severance of lease

8—Severance of head lease

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 4—The Corporation and its functions

Division 1—The Corporation

9—Establishment of the Corporation

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

10—General legal capacity of the Corporation

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.

11—The Corporation's operations, management and procedures

- (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.

12—Membership of Corporation

- (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.

13—Meetings of the members

- (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.

Division 2—Insurance

14—Insurance

- (1) The Corporation must keep itself insured to an extent fixed by the regulations against liabilities of specified classes.
- (1a) The Corporation may, at the request and on behalf of a stakeholder or stakeholders generally, insure the stakeholder or stakeholders against—
 - (a) public liability;
 - (b) damage to, or destruction of, buildings, structures, plant, equipment or other facilities;
 - (c) any other insurable risk.
- (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

15—Common area

- (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; and
 - (c) the Corporation may grant rights of exclusive occupation over parts of the common area if—
 - (i) the Corporation is satisfied that to do so would enhance the use or enjoyment of the common area; and

(ii) the grant is authorised by special resolution.

- (4) The term for which the Corporation grants rights of exclusive occupation over a part of the common area is not to exceed three years.

16—Corporation's obligation to maintain common area

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

17—The shared facilities and basic services

- (1) The *shared facilities* are—
- (a) the facilities identified in the regulations as in force at the commencement of this subsection as the shared facilities; or
 - (b) if the Corporation has published a Schedule of shared facilities under subsection (2)—the facilities described as shared facilities in the Schedule last published under that subsection.
- (2) The Corporation may, with unanimous agreement of the stakeholders, publish in the Gazette a Schedule identifying facilities that are to be provided by the Corporation for the benefit of stakeholders generally, or one or more stakeholders, as shared facilities.
- (2a) A Schedule published under subsection (2) supersedes an earlier regulation or Schedule identifying shared facilities.
- (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;
 - (e) any other service that is to be provided by the Corporation for the benefit of stakeholders by unanimous agreement of the stakeholders.

18—Corporation's obligation to provide basic services

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

19—Property in shared facility

- (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.

20—Corporation's obligation to provide and maintain shared facilities

- (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 4A—Other functions

20A—Riverbank Precinct Master Plan

- (1) *The Corporation is responsible for—*
- (a) *consulting with stakeholders about the formulation and implementation of proposals for the Riverbank Precinct Master Plan;*
 - (b) *consulting on behalf of stakeholders about the formulation and implementation of the Riverbank Precinct Master Plan with agencies responsible for its formulation or implementation;*
 - (c) *making on behalf of stakeholders voluntary contributions towards the implementation of the Riverbank Precinct Master Plan;*
 - (d) *generally assisting with the implementation of the Riverbank Precinct Master Plan to the benefit of the State and the stakeholders.*

- (2) *In this section—*

Riverbank Precinct Master Plan means the plan proposed in the Riverbank Precinct Adelaide, Master Plan Report February 1999 commissioned by the State Government of South Australia, as amended from time to time.

- (3) *This section expires on 30 June 2004.*

Note—

Section 20A has expired.

20B—Adjacent facilities

The Corporation may maintain and operate facilities, and make provision for the safety of persons and property, in areas adjacent to the Site associated with the use and enjoyment of the Site if authorised to do so by unanimous agreement of the stakeholders.

Division 5—Compulsory contributions

21—Budget of income and expenditure

- (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.

22—Compulsory contributions

- (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) 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 unanimous vote of its members 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.
- (3a) If a particular service is provided at the request of, and on behalf of, a stakeholder, a separate contribution may be levied against the stakeholder for the provision of that service.
- (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

23—Accounts

- (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 Act 2001* of the Commonwealth in relation to the keeping of its accounts.

24—Audit

- (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

25—Appointment of administrator

- (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

26—Substitution of head lease

- (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.

27—Winding up of the Corporation

- (1) The Corporation may be wound up in the same way as a company incorporated under Part 2A.2 of the *Corporations Act 2001* of the Commonwealth.
- (1a) For the purposes of subsection (1), the matter of the winding up of the Corporation is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.5 and 5.6 of the *Corporations Act 2001* of the Commonwealth as if the Corporation were a company, subject to the operation of subsection (2).
- (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.

28—Exemption from stamp duty

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.

29—Effect of things done under Act

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.

30—Interaction between this Act and other Acts

- (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 223LD 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*.

31—Regulations and proclamations

- (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.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1997	38	<i>ASER (Restructure) Act 1997</i>	17.7.1997	5.2.1998 (<i>Gazette</i> 5.2.1998 p862) except Pt 4 and s 27—30.6.1998 (<i>Gazette</i> 25.6.1998 p2648)
1999	45	<i>ASER (Restructure) (Miscellaneous) Amendment Act 1999</i>	12.8.1999	19.8.1999 (<i>Gazette</i> 19.8.1999 p882)
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 4 (ss 7 & 8)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 (<i>Gazette</i> 21.6.2001 p2270)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 8 (s 40)—4.9.2006 (<i>Gazette</i> 17.8.2006 p2831)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>Pt 1</i>		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>30.6.2004</i>
<i>s 3</i>		
<i>special resolution</i>	<i>inserted by 45/1999 s 3</i>	<i>19.8.1999</i>
Pt 2		
Pt 2 Div 2	substituted by 45/1999 s 4	19.8.1999
Pt 2 Div 3	inserted by 45/1999 s 4	19.8.1999
Pt 2 Div 4	inserted by 45/1999 s 4	19.8.1999
Pt 4	heading substituted by 45/1999 s 5	19.8.1999

Pt 4 Div 2	heading substituted by 45/1999 s 6	19.8.1999
s 14		
s 14(1a)	inserted by 45/1999 s 7	19.8.1999
Pt 4 Div 3		
s 15		
s 15(3)	amended by 45/1999 s 8(a)	19.8.1999
s 15		
s 15(4)	inserted by 45/1999 s 8(b)	19.8.1999
Pt 4 Div 4		
s 17		
s 17(1) and (2)	substituted by 45/1999 s 9(a)	19.8.1999
s 17(2a)	inserted by 45/1999 s 9(a)	19.8.1999
s 17(3)	amended by 45/1999 s 9(b)	19.8.1999
Pt 4 Div 4A	inserted by 45/1999 s 10	19.8.1999
s 20A	<i>expired: s 20A(3)</i>	<i>(30.6.2004)</i>
Pt 4 Div 5		
s 21		
s 21(4) and (5)	<i>deleted by 45/1999 s 11</i>	<i>19.8.1999</i>
s 22		
s 22(1)	amended by 45/1999 s 12(a)	19.8.1999
s 22(2)	amended by 45/1999 s 12(b)	19.8.1999
s 22(3a)	inserted by 45/1999 s 12(c)	19.8.1999
Pt 4 Div 6		
s 23		
s 23(2)	amended by 23/2001 s 7	15.7.2001
Pt 5		
s 27		
s 27(1)	amended by 23/2001 s 8(a)	15.7.2001
s 27(1a)	inserted by 23/2001 s 8(b)	15.7.2001

Historical versions

Reprint No 1—19.8.1999