



Government Business Enterprises Act 1995

**An Act to make provision in respect of the establishment, commercial operation and accountability of Government Business Enterprises, the relationship between Government Business Enterprises and the Government and the payment of financial returns to the State by Government Business Enterprises and for related purposes
[Royal Assent 1 SEPTEMBER 1995]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Government Business Enterprises Act 1995*.

2. Commencement

This Act –

(a) commences on 1 July 1995 if it receives the Royal Assent on or before that day; or

(b) is taken to have commenced on 1 July 1995 if it receives the Royal Assent after that day.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

"accounting records" includes –

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) such working papers and other documents as are necessary to explain the methods and calculations by which a Government Business Enterprise's financial statements are made up;

"Agency" has the same meaning as in the *State Service Act 2000*;

"amend" includes –

(a) omit matter; and

(b) insert or add matter; and

(c) omit matter and substitute other matter;

"annual report" means an annual report prepared under *section 55*;

"associated entity" has the meaning given by *section 3A*;

"audit committee" means the audit committee established under *section 16(1)(a)*;

"Australian Accounting Standards" means Statements of Accounting Standards issued jointly by the National Councils of the Australian Society of Certified Practising Accountants and The Institute of Chartered Accountants in Australia or their successors;

"beneficial interest" includes a potential interest in property subject to a discretionary trust;

"Board" means –

(a) the Board of Directors of a Government Business Enterprise specified in Part 1 of Schedule 1 appointed under section 11(2); or

(b) the Board of Directors, within the meaning of section 11(5), of a Government Business Enterprise specified in Part 2 of Schedule 1;

"borrowing" means any borrowing, loan, temporary accommodation, advance or other form of raising funds in relation to which the principal is repayable;

"chairperson" means –

(a) the chairperson of a Board of a Government Business Enterprise specified in Part 1 of Schedule 1 appointed under section 11(2); or

(b) the person appointed or otherwise established by or under the Portfolio Act as, or to act in the office of, chairperson of a Board of a Government Business Enterprise specified in Part 2 of Schedule 1;

"charge" includes tariff, fee and premium;

"chief executive officer" means the chief executive officer of a Government Business Enterprise appointed under section 18(2) or as specified in section 18(7);

"committee" means the audit committee or another committee established under section 16;

"Commonwealth Tax Act" means the *Income Tax Assessment Act 1936* of the Commonwealth together with the *Income Tax Assessment Act 1997* of the Commonwealth and any other enactments of the Commonwealth relating to income tax;

"community service obligation" has the same meaning as in Part 9;

"comply with" includes does not contravene;

"contract" includes an agreement, arrangement, loan or other transaction;

"contravene" includes fail to comply with;

"conversion day" means –

(a) in the case of a statutory authority specified in Schedule 1 as in force on 1 July 1995, that day; or

(b) in any other case, the day on which a State service authority or independent employing authority becomes a Government Business Enterprise;

"corporate plan" means the corporate plan approved under section 39;

"costing basis" means the basis for determining the costs or estimated costs of community service obligations agreed under section 62;

"debenture" has the same meaning as in the Corporations Act;

"director" means –

(a) the chairperson; and

(b) in the case of a Government Business Enterprise specified in Part 1 of Schedule 1, a person appointed as a director (other than as chairperson) under section 11(2); and

(c) in the case of a Government Business Enterprise specified in Part 2 of Schedule 1, a person appointed or otherwise established by or under the Portfolio Act as, or to act in the office of, a member of the Government Business Enterprise or its governing authority (other than as chairperson);

"dividend" means –

(a) a dividend specified in a recommendation approved under section 84(1)(a); or

(b) a dividend which a Government Business Enterprise is directed to pay under section 84(1)(c); or

(c) a dividend specified in a notice referred to in section 84(4);

"employee" means a person –

(a) employed by a Government Business Enterprise under section 21(1); or

(b) appointed or employed for the purposes of a Government Business Enterprise, as specified in section 21(3);

"enactment" means an Act, order or other instrument of a legislative character;

"financial accommodation" means a financial benefit or assistance to obtain a financial benefit arising from or as a result of –

(a) a loan; or

(b) issuing, endorsing or otherwise dealing in promissory notes; or

(c) drawing, accepting, endorsing or otherwise dealing in bills of exchange; or

(d) issuing, purchasing or otherwise dealing in securities; or

(e) granting or taking a lease for financing but not for operating purposes; or

(f) any other transaction or arrangement that the Treasurer's Instructions specify to be financial accommodation for the purposes of this Act;

"financial arrangement" means any one or more of the following when entered into and performed in accordance with the Treasurer's Instructions:

(a) a currency swap;

(b) an interest rate swap;

- (c) a forward exchange rate agreement;
- (d) a forward interest rate agreement;
- (e) a futures contract, or futures option, within the meaning of the Corporations Act;
- (f) a currency option;
- (g) an interest rate option;
- (h) any other transaction or arrangement that the Treasurer's Instructions specify to be a financial arrangement for the purposes of this Act;

"financial statements" means –

- (a) the financial statements prepared in respect of a Government Business Enterprise under section 52; and
- (b) the consolidated financial statements prepared in respect of a Government Business Enterprise and all of its subsidiaries under that section;

"financial year", in relation to a Government Business Enterprise or its subsidiary, means –

- (a) if the Portfolio Act or another Act specifies a period of 12 months in respect of which the Government Business Enterprise or subsidiary is required to maintain financial records, that period; or
- (b) if such a period is not specified by the Portfolio Act or another Act and the Treasurer approves a period of 12 months in

respect of which the Government Business Enterprise or subsidiary is required to maintain financial records, that period;
or

(c) in every other case, a period of 12 months ending on 30 June in any year;

"function" includes duty;

"Government Business Enterprise" means a statutory authority specified in Schedule 1;

"Government department" means an organ of the executive government of Tasmania including, in particular, a Government department within the meaning of the *State Service Act 2000*;

"guarantee fee" means the fee payable under section 78;

"income tax equivalent" means the income tax equivalent a Government Business Enterprise or subsidiary is liable to pay under section 68;

"indemnify" includes indemnify indirectly through one or more interposed entities;

"independent employing authority" means a statutory authority that –

(a) is to become a Government Business Enterprise on the conversion day; and

(b) immediately before that day, has the power to employ as members of its staff persons who are not State service employees;

"initial chief executive officer" means a person who becomes a chief executive officer on the conversion day under section 91;

"initial director" means a person who becomes a director on the conversion day under section 92;

"initial employee" means a person who –

(a) is taken to have been employed under section 21(1) by a Government Business Enterprise by the operation of section 90(1); or

(b) is taken to have been employed pursuant to section 21(3) by the operation of section 90(2);

"interim dividend" means –

(a) an interim dividend specified in a recommendation approved under section 85(3)(a); or

(b) an interim dividend which a Government Business Enterprise is directed to pay under section 85(3)(c); or

(c) an interim dividend specified in a notice referred to in section 85(6);

"interim report" means –

(a) a quarterly report under section 57; and

(b) information provided to a Minister under section 58;

"investigator" means a person authorised under section 102(1) or (2) to undertake an investigation of a Government Business Enterprise or subsidiary;

"lease" means –

(a) any lease, licence, charter or hiring arrangement of any real or personal property; or

(b) any arrangement under which a right to use, operate, manage or provide services in respect of any real or personal property is granted by the owner to another person;

"loss" means the loss or deficit shown in the financial statements in respect of a financial year after –

(a) any extraordinary items have been taken into account; and

(b) provision has been made for any income tax equivalent payable;

"main undertaking" means an undertaking or asset specified in a corporate plan to be a main undertaking;

"material personal interest" has the meaning given by section 3B;

"ministerial charter" means the charter provided to a Government Business Enterprise under section 36;

"money" includes negotiable instruments or securities of any kind for the payment of money;

"officer" means –

(a) a director; and

(b) a chief executive officer; and

(c) a person who is concerned with, or takes part in, the management of a Government Business Enterprise;

"partner" means the person with whom a person is in a personal relationship, within the meaning of the *Relationships Act 2003*;

"pay" includes pay indirectly through one or more interposed persons;

"Portfolio Act", in relation to a Government Business Enterprise, means the enactment by or under which that Government Business Enterprise is established together with any other enactment, other than this Act, which is expressed as being required to be incorporated and read as one with that enactment;

"Portfolio Minister" means –

(a) in relation to a Government Business Enterprise constituted by or under an enactment or part of an enactment, the Minister to whom the administration of that enactment or part is assigned; and

(b) in relation to a Government Business Enterprise not constituted by or under an enactment, the Minister to whom the administration of the Government Business Enterprise is assigned;

"prescribed interest" has the same meaning as in the *Corporations Law*;

"prescribed rate" means the rate determined from time to time by the Treasurer;

"regulations" means regulations made and in force under this Act;

"relative" means –

- (a) the spouse or partner of a person; and
- (b) the parent or remoter linear ancestor of a person; and
- (c) the child or remoter issue of a person; and
- (d) the brother or sister of a person;

"ruling" means –

- (a) a ruling made by the Treasurer in the exercise of his or her powers obtained by the application of section 67(2) or (3); and
- (b) a ruling made by the Treasurer under section 71;

"security" includes inscribed stock, bonds, debenture stock, notes or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation whether constituting a charge on property or not;

"sinking fund advances" means loans and advances –

- (a) that were made before 1 May 1995 by the Treasurer to a State service authority or independent employing authority; and

(b) in respect of which sinking fund contributions were payable to the National Debt Commission as in existence before that day;

"special dividend" means a special dividend a Government Business Enterprise is directed to pay under section 86;

"State charge" means any rate, tax, duty or other impost imposed by or under any enactment of the State;

"State service authority" means a statutory authority that –

(a) is to become a Government Business Enterprise on the conversion day; and

(b) immediately before that day, has as members of its staff persons who are State service employees;

"statement of corporate intent" has the meaning given by section 41;

"statutory authority" means an incorporated or unincorporated body which is established, constituted or continued by or under an Act or under the royal prerogative, being a body which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority, including a Government Business Enterprise;

"subsidiary" has the meaning given by section 4;

"Treasurer's Instructions" means instructions issued under section 114.

(2) The Treasurer may, by notice published in the *Gazette*, determine the prescribed rate for the purposes of this Act.

(3) Subject to this Act, any request, direction, declaration, determination, approval, requirement, information, recommendation, deferral, waiver, notice, notification, advice, application, agreement, amendment, revocation or substitution made, given or done under this Act is to be made, given or done in writing.

3A. Associated entities

(1) In relation to a director, each of the following persons is an associated entity if the director or a relative of the director has control over the person:

- (a) a body corporate;
- (b) a partnership or other unincorporated association of persons;
- (c) a majority of trustees of a trust.

(2) For the purposes of determining whether the director has control over a person referred to in subsection (1), the following matters may be taken into account:

- (a) whether the director or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;
- (b) whether the director or his or her relative is a beneficiary in the trust of which that person is a trustee;
- (c) any other matter or relationship that is relevant.

(3) For the purposes of determining whether the relative of a director has control over a person referred to in subsection (1), the following matters may be taken into account:

(a) whether the relative or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;

(b) whether the relative or his or her relative is a beneficiary in the trust of which that person is a trustee;

(c) any other matter or relationship that is relevant.

3B. Material personal interest

(1) In this Act,

"material personal interest", in respect of a director of a Government Business Enterprise, includes –

(a) a direct or indirect interest; and

(b) a pecuniary or non-pecuniary interest; and

(c) the interest of a relative of the director; and

(d) the interest of an associated entity; and

(e) an interest in a corporation, within the meaning of the Corporations Act 2001 of the Commonwealth; and

(f) the director's employment by a person with a direct or indirect interest in that Government Business Enterprise of which the director is a director; and

(g) the holding by the director of an office where there arises or may arise a conflict between his or her duties in that office and his or her duties as director of that Government Business Enterprise; and

(h) the holding by the director of the office of member in another statutory authority or in the governing authority of another statutory authority; and

(i) any other interest that does, or may, give rise to a conflict of interest.

(2) A director of a Government Business Enterprise does not have a material personal interest by reason only of the director also being a State Service employee or State Service officer.

(3) A director of a Government Business Enterprise does not have a material personal interest by reason only of an interest in a contract with the Government Business Enterprise for a good or service ordinarily supplied by the Government Business Enterprise and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.

4. Subsidiaries

(1) A body corporate is a subsidiary of a Government Business Enterprise if –

(a) were the Government Business Enterprise and body corporate corporations under the Corporations Act, the body corporate would be a subsidiary of the Government Business Enterprise under that Act; or

(b) the body corporate is declared by the Treasurer, by notice published in the *Gazette*, to be a subsidiary of the Government Business Enterprise.

(2) A statutory authority that is not a body corporate is a subsidiary of a Government Business Enterprise if it is declared by the Treasurer, by notice published in the *Gazette*, to be a subsidiary of the Government Business Enterprise.

(3) If a Government Business Enterprise is a subsidiary of another Government Business Enterprise, the subsidiary is taken not to be a Government Business Enterprise (but continues to be a subsidiary) for the purposes of section 57 and Parts 6, 10 and 11.

5. Relationship between this Act and Portfolio Act

(1) The provisions of this Act are incorporated with, and are to be read as one Act with, the Portfolio Act.

(2) If a provision of this Act is inconsistent with a provision of the Portfolio Act or any other Act that imposes or confers functions or powers on the Government Business Enterprise, the provision of this Act prevails and the provision of the Portfolio Act or other Act is, to the extent of the inconsistency, invalid except where the Portfolio Act or other Act expressly provides otherwise.

PART 2 - Legal entity, objectives, functions and powers of Government Business Enterprise

6. Legal entity of Government Business Enterprise

A Government Business Enterprise –

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

7. Principal objectives of Government Business Enterprise

(1) The principal objectives of a Government Business Enterprise are –

(a) to perform its functions and exercise its powers so as to be a successful business by –

(i) operating in accordance with sound commercial practice and as efficiently as possible; and

(ii) achieving a sustainable commercial rate of return that maximises value for the State in accordance with its corporate plan and having regard to the economic and social objectives of the State; and

(b) to perform on behalf of the State its community service obligations in an efficient and effective manner; and

(c) to perform any other objectives specified in the Portfolio Act.

(2) On the request of the Portfolio Minister, the Treasurer may, by notice published in the *Gazette*, specify the economic and social objectives of the State relevant to the Government Business Enterprise specified in the notice.

(3) On the request of the Portfolio Minister, the Treasurer may, by order, exempt the Government Business Enterprise specified in the order from the application of subsection (1)(a)(ii).

(4) The provisions of section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (3) as if the order were regulations within the meaning of that Act.

8. Functions of Government Business Enterprise

A Government Business Enterprise has the functions imposed by or under this Act, its Portfolio Act and any other Act.

9. Powers of Government Business Enterprise

(1) A Government Business Enterprise has the following powers:

- (a)** to acquire, hold, dispose of and otherwise deal with property;
- (b)** to transfer any of its property, rights, liabilities and obligations (whether for valuable consideration or otherwise) to a subsidiary;
- (c)** to enter into contracts;
- (d)** to appoint agents and attorneys;
- (e)** to act as agent for another person;
- (f)** to form, and participate in the formation of, bodies corporate;

- (g)** to participate in partnerships, trusts, joint ventures and arrangements for the sharing of profits;
- (h)** to enter into a contract with another person for the performance or exercise of any of its functions or powers either jointly with that other person or by that other person;
- (i)** to set charges, terms and conditions relating to work done, or services, goods or information supplied, by it except where the Portfolio Act provides otherwise;
- (j)** to engage consultants and provide consultancy services;
- (k)** to carry on any business which may conveniently be carried on in conjunction with the performance of its functions;
- (l)** to do all other things it is authorised to do by or under this or any other Act;
- (m)** to do all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers.

(2) A Government Business Enterprise may perform and exercise its functions and powers in Australia and, if the Portfolio Minister approves, elsewhere.

(3) A Government Business Enterprise may use and operate under one or more trading names approved by the Portfolio Minister.

10. Limitation on powers

(1) A Government Business Enterprise must not transfer any property, right, liability or obligation to a subsidiary unless –

(a) the subsidiary agrees to the proposed transfer; and

(b) the Portfolio Minister and Treasurer have approved the proposed transfer.

(2) A Government Business Enterprise must not form or participate in the formation of a body corporate which the Government Business Enterprise intends to be a subsidiary and which is to be incorporated under the Corporations Act unless the Portfolio Minister and Treasurer have approved the constitution that is to be the constitution of the subsidiary on its incorporation.

(3) Except with the approval of the Portfolio Minister and Treasurer, a Government Business Enterprise must not—

(a) acquire a number of shares in a body corporate sufficient to make it a subsidiary; or

(b) dispose of a number of shares in a body corporate sufficient to cause it not to be a subsidiary; or

(c) enter into a contract that results in a body corporate becoming or ceasing to be a subsidiary.

(4) A Government Business Enterprise that is a shareholder in a company, within the meaning of the Corporations Act, that is its subsidiary must not approve or agree to an alteration to the constitution of the company except where the Government Business Enterprise has first obtained the approval of the Portfolio Minister and Treasurer to that alteration.

(5) The Portfolio Minister and Treasurer must not approve—

- (a)** any constitution that is inconsistent with this Act; and
- (b)** an alteration to any constitution that would result in the constitution being inconsistent with this Act.

(6) A Government Business Enterprise must not exercise its power to participate in a partnership, trust, joint venture or arrangement for the sharing of profits unless the Portfolio Minister, after consulting with the Treasurer, has approved the exercise of that power.

(7) Except with the consent of the Portfolio Minister and Treasurer, a Government Business Enterprise must not—

- (a)** dispose of a main undertaking; or
- (b)** allow its subsidiary to dispose of a main undertaking.

(8) A consent under subsection (7) is of no effect until it is approved by both Houses of Parliament.

(9) A consent under subsection (7) is approved by a House of Parliament —

- (a)** when the House passes a motion approving the consent; or
- (b)** at the end of five sitting days after the consent was laid before the House if no notice of a motion to disapprove the consent is before the House; or
- (c)** if such a notice is before the House at the end of that period, when the first of the following things occurs:
 - (i)** the notice is withdrawn; or

- (ii) the motion is negatived; or
- (iii) a further period of five sitting days ends.

PART 3 - Board of Directors of Government Business Enterprise

11. Board

(1) A Government Business Enterprise specified in Part 1 of Schedule 1 has a Board of Directors consisting of –

- (a) the chairperson of the Board; and
- (b) not less than 3 and not more than 8 other persons.

(2) The chairperson and the directors referred to in subsection (1)(b) are appointed by the Governor on the joint recommendation of the Treasurer and Portfolio Minister.

(3) The Treasurer and Portfolio Minister must not make a recommendation under subsection (2) unless –

- (a) they have considered any recommendations made by the Board of the Government Business Enterprise under subsection (3A); and
- (b) they are satisfied that the person recommended has the experience and skills necessary to enable the Government Business Enterprise to achieve its objectives.

(3A) The Board may provide the Treasurer and Portfolio Minister with its recommendations, in writing, in respect of the appointment of a chairperson or another director.

(4) Schedule 5 has effect with respect to the directors (including the chairperson) appointed under subsection (2).

(5) The Board of a Government Business Enterprise specified in Part 2 of Schedule 1 is the members of the Government Business Enterprise, or its governing authority, as appointed or constituted under the Portfolio Act.

(6) A person may not hold the office of chief executive officer in any Government Business Enterprise in conjunction with the office of chairperson.

(7) Schedule 6 has effect with respect to the meetings of any Board.

12. Role of Board

A Board is responsible to the Portfolio Minister and Treasurer, jointly—

(a) for ensuring that the business and affairs of the Government Business Enterprise are managed and conducted in a manner that is in accordance with sound commercial practice; and

(b) for the performance by the Government Business Enterprise of its functions; and

(c) for the achievement by the Government Business Enterprise of its objectives as specified in this Act, any other Act and the corporate plan of the Government Business Enterprise.

13. Duty to notify Treasurer and Portfolio Minister of adverse developments

(1) A Board must notify the Treasurer and Portfolio Minister of any development which, in the opinion of the Board, may–

(a) prevent or significantly affect the achievement of the financial performance objectives under the corporate plan by the Government Business Enterprise or its subsidiaries; or

(b) significantly affect the financial viability or operating ability of the Government Business Enterprise, any subsidiary or any partnership, trust, joint venture or arrangement for the sharing of profits in which the Government Business Enterprise participates; or

(c) otherwise significantly affect the Government Business Enterprise in any manner.

(2) A notification is to be given immediately after the Board becomes aware of the development.

14. Powers of Board

A Board has power to do all things necessary or convenient to be done in connection with the performance and exercise of its functions and powers under this or any other Act.

15. Delegation

A Board may delegate any of its functions or powers under this or any other Act, other than this power of delegation, to any one or more of the following:

- (a)** a director;
- (b)** a chief executive officer;
- (c)** a committee;
- (d)** an employee.

16. Committees

(1) A Board –

- (a)** must establish an audit committee; and
- (b)** may establish such other committees as it considers appropriate.

(2) A committee –

- (a)** must provide a Board with advice on any matter referred to it by the Board; and
- (b)** must perform any functions, and may exercise any powers, delegated to it by the Board.

(3) In addition to its functions under subsection (2), the audit committee must provide a Board with advice on –

- (a)** the internal audit function of the Government Business Enterprise; and
- (b)** monitoring the Government Business Enterprise's systems of financial reporting and internal control; and

(c) the resources necessary for the performance of the internal audit function of the Government Business Enterprise.

(4) Schedule 7 has effect with respect to the members and meetings of a committee.

17. Acting directors

(1) For the purposes of this section, a director is absent if he or she –

(a) is absent from duty; or

(b) is otherwise unable to perform the functions of the office of a director.

(2) The Governor, on the recommendation of the Portfolio Minister, may appoint a person to act as a director of a Government Business Enterprise specified in Part 1 of Schedule 1 if the chairperson or a director referred to in section 11(1)(b) is absent.

(3) The Portfolio Minister must not make a recommendation under subsection (2) unless he or she has ensured that the person recommended has the experience and skills necessary to enable the Government Business Enterprise to achieve its objectives.

(4) An acting director of a Government Business Enterprise specified in Part 2 of Schedule 1 is a person appointed or otherwise employed to act as a director of the Government Business Enterprise under the Portfolio Act.

(5) The appointment or other employment of a person to act as a director if the chairperson is absent is not an appointment to act in the position of chairperson.

(6) While a person appointed or otherwise employed to act as director is acting as a director that person is taken to be a director.

(7) The appointment or other employment of a person to act as a director terminates when the absent chairperson or director resumes the performance of his or her functions as director.

PART 4 - Staff of Government Business Enterprise

Division 1 - Chief executive officer

18. Chief executive officer

(1) In this section –

"accumulation scheme" means the Tasmanian Accumulation Scheme established under the *Public Sector Superannuation Reform Act 1999*;

"complying superannuation scheme" means a complying superannuation fund as provided by the law of the Commonwealth;

"contributory scheme" means the superannuation arrangements provided by Part 4 of the *Retirement Benefits Regulations 1994*.

(1A) Each Government Business Enterprise must have a chief executive officer.

(2) The Premier, on the recommendation of the Portfolio Minister, may appoint a person, other than the chairperson, as chief executive officer of a Government Business Enterprise that is not an Agency.

(2A) Except as provided by subsection (2D), a person must not be recommended to the Premier for appointment as a chief executive officer of a Government Business Enterprise unless that person has been nominated for recommendation by the Board.

(2B) If a person is to be appointed as chief executive officer of a Government Business Enterprise, the Portfolio Minister may require the Board, within the period specified in the requirement –

(a) to nominate a person it considers suitable to hold the office of chief executive officer; and

(b) to provide a recommendation in respect of the remuneration and allowances for the chief executive officer; and

(c) to provide details of the performance appraisal system the Board intends to use to review the performance of the chief executive officer.

(2C) If the Portfolio Minister does not consider the person nominated by the Board under subsection (2B)(a) to be suitable to hold the office of chief executive officer, the Portfolio Minister may, under that subsection, require the Board to provide the name of another person it considers suitable to hold that office.

(2D) If the Board fails to nominate a person as required under subsection (2B), the Portfolio Minister may recommend for the purposes of subsection (2) a person who the Portfolio

Minister considers suitable but who has not been nominated by the Board.

(3) A chief executive officer appointed under subsection (2) is entitled to be paid the remuneration and allowances specified in the instrument of appointment.

(4) A chief executive officer appointed under subsection (2) holds that office for a term of not more than 5 years, and on the conditions specified in the instrument of appointment.

(4A) Where a person is appointed as chief executive officer –

(a) he or she is not eligible to become a member of the contributory scheme; and

(b) the application of the *Public Sector Superannuation Reform Act 1999* extends to the chief executive officer as if he or she were an employee for the purposes of that Act; and

(c) subject to subsection (4B), he or she is to be a member of the accumulation scheme.

(4B) The chief executive officer may elect by notice in writing given to the Board, either before or after commencing the duties of that office, to become a member of a complying superannuation scheme other than the accumulation scheme.

(4C) The chief executive officer is entitled to employer superannuation contributions at the rate specified in the *Public Sector Superannuation Reform Act 1999*.

(4D) Subsections (4A), (4B) and (4C) do not apply to a person who, immediately before his or her appointment as chief executive officer, was a contributor to the contributory scheme.

(4E) Where an election is made under subsection (4B), the Board is not required to pay superannuation contributions into a complying superannuation scheme if that scheme does not accept payment by electronic funds transfer.

(5) The Premier, on the recommendation of the Portfolio Minister or the Board, may revoke the appointment of a chief executive officer made under subsection (2) –

(a) if the instrument of appointment makes provision in respect of the early termination of the appointment, in accordance with the instrument of appointment; or

(b) if the instrument of appointment does not make such provision, on the terms determined by the Premier.

(6) The Portfolio Minister must not make a recommendation under subsection (5) unless he or she has first consulted with the Board.

(6A) The Board must not make a recommendation under subsection (5) unless it has first consulted with the Portfolio Minister.

(7) The office of chief executive officer of a Government Business Enterprise that is an Agency is taken to be an office created under section 29 of the *State Service Act 2000*.

(8)

(9) A chief executive officer must not engage in paid employment outside the duties of the office unless he or she is allowed to do so by the instrument of appointment or contract of employment.

(10) The appointment or employment of a person as chief executive officer is not invalid merely because of a defect or irregularity in relation to the appointment or contract of employment.

19. Role of chief executive officer

(1) A chief executive officer is responsible to the Board for the general administration and management of the Government Business Enterprise.

(2) A chief executive officer –

(a) must perform any functions, and may exercise any powers, delegated to the chief executive officer by the Board; and

(b) must perform any other functions imposed on, and may exercise any other powers granted to, him or her by this or any other Act.

20. Acting chief executive officer

(1) For the purposes of this section, a chief executive officer is absent if he or she –

(a) is absent from duty; or

(b) is otherwise unable to perform the functions of the office of Chief Executive Officer; or

(c) has died, resigned, been removed from office or had an order under section 29(3)(a) made against him or her and a new chief executive officer has not been appointed.

(2) The Portfolio Minister may appoint a person who is eligible to be appointed as chief executive officer to act as chief executive officer during any or every period during which the chief executive officer is absent.

(3) An appointment is for such term, not exceeding 6 months, as is specified in the instrument of appointment.

(4) A chairperson is not ineligible to be appointed only because he or she is the chairperson.

(5) While a person appointed under subsection (2) is acting as chief executive officer that person is taken to be the chief executive officer.

(6) Section 18(3), (4), (5), (9) and (10) applies in relation to the appointment of an acting chief executive officer as if it were an appointment of a chief executive officer.

20A. Effect of chief executive officer ceasing to be chief executive officer

(1) If a person holds both the office of chief executive officer of a Government Business Enterprise and the office of director in that Government Business Enterprise, on the termination of his or her appointment as chief executive officer –

(a) his or her appointment as director is revoked; and

(b) any appointment of that person as director in a subsidiary of that Government Business Enterprise is revoked; and

(c) any membership of that person in any committee created by the Board or other managing authority of that Government Business Enterprise or subsidiary ceases.

(2) Subsection (1) does not affect the eligibility of the person to be reappointed to an office referred to in that subsection.

20B. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer during that financial year.

(2) The review of the performance of the chief executive officer is to be completed not later than 90 days after the end of the financial year in respect of which it is conducted.

(3) The Board is to provide the Portfolio Minister with a copy of its findings in the review of the performance of the chief executive officer within 14 days after completing the review.

Division 2 - Other staff

21. Staff

(1) A Government Business Enterprise that is not an Agency may employ such persons as it considers necessary for the performance of its functions.

(2) The *State Service Act 2000* does not apply in relation to employees employed under subsection (1).

(3) The employees of a Government Business Enterprise that is an Agency are to be appointed or employed subject to and in accordance with the State Service Act 2000.

Division 3 - Miscellaneous matters relating to staff

22. Superannuation

(1) A Government Business Enterprise that is not an Agency may, for the benefit of its employees—

(a)

(b) make contributions to one or more superannuation schemes that comply with any law of the Commonwealth relating to superannuation; and

(c) cease to make contributions to any superannuation scheme.

(1A) A contribution made in accordance with subsection (1)(b) in respect of an employee appointed on or after the commencement day specified in the Public Sector Superannuation Reform Act 1999 is not to be in excess of the rate specified in section 6(7) of that Act.

(2) Without limiting the power of the Government Business Enterprise to make contributions to any other superannuation scheme, a Government Business Enterprise that is not an Agency may participate in the superannuation schemes provided by and under the Retirement Benefits Act 1993 and, if it does so participate in those schemes in relation to the chief executive officer or an employee, it is a State authority for the purposes of that Act in respect of that chief executive officer or employee.

(3) Except as otherwise provided by subsection (2) or section 95, the Retirement Benefits Act 1993 does not apply in relation to a Government Business Enterprise that is not an Agency, its chief executive officer or its employees.

(4) A Government Business Enterprise must not establish a superannuation scheme after the commencement day specified in the Public Sector Superannuation Reform Act 1999.

(5) A Government Business Enterprise must comply with any instruction relating to superannuation given by the Minister responsible for the administration of the Retirement Benefits Act 1993 or the Public Sector Superannuation Reform Act 1999.

23. Long Service Leave (State Employees) Act 1994 does not apply

Subject to this Act, the Long Service Leave (State Employees) Act 1994 does not apply in relation to a Government Business Enterprise that is not an Agency, its chief executive officer or its employees.

PART 5 - Powers and duties of, offences by and indemnification of directors and staff

23A. Power of former director to access records

(1) In this section,

"former director" means a person who ceased to be a director within the period of 7 years immediately preceding the relevant time.

(2) A former director of a Government Business Enterprise may inspect and make copies of the records of the Government Business Enterprise, including its accounting records, financial

statements and interim reports, at any reasonable time for the purpose of a legal proceeding –

(a) to which the former director is a party; or

(b) that the former director proposes in good faith to bring; or

(c) that the former director has reason to believe will be brought against him or her.

(3) The Government Business Enterprise must allow a former director to exercise his or her powers under this section to inspect and make copies of records.

Penalty:

Fine not exceeding 500 penalty units.

(4) This section does not limit any right of access to the records of a Government Business Enterprise that a former director has apart from this section.

23B. Power of director to access records

(1) A director may inspect and make copies of the records of the Government Business Enterprise, including its accounting records, financial statements and interim reports, at any reasonable time.

(2) A director or officer must not prevent a director from exercising his or her powers under this section to inspect and make copies of records.

Penalty:

Fine not exceeding 50 penalty units.

24. Duties of officers and employees

(1) In this section –

"business judgment" means any decision to take or not take action in respect of a matter relevant to the business operations of the Government Business Enterprise;

"former employee" means a person who ceased to be an employee within the period of 7 years immediately preceding the relevant time;

"former officer" means a person who ceased to be an officer within the period of 7 years immediately preceding the relevant time.

(2) An officer of a Government Business Enterprise must perform and exercise the functions and powers of his or her office in that Government Business Enterprise –

(a) in good faith in the best interests of the Government Business Enterprise; and

(b) for a proper purpose.

Penalty:

Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both.

(3) An officer of a Government Business Enterprise must exercise his or her powers and perform his or her functions with

the degree of care and diligence that a reasonable person would exercise if he or she –

(a) were an officer of a Government Business Enterprise in the circumstances of the Government Business Enterprise; and

(b) occupied the office held by, and had the same responsibilities within the Government Business Enterprise as, the officer.

Penalty:

Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both.

(4) An officer of a Government Business Enterprise who makes a business judgment is taken to meet the requirements of subsection (3), and his or her equivalent duties at common law and in equity, in respect of the judgment if the officer –

(a) makes the judgment in good faith for a proper purpose; and

(b) does not have a material personal interest in the subject matter of the judgment; and

(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and

(d) rationally believes that the judgment is in the best interests of the Government Business Enterprise.

(5) For the purposes of subsection (4)(d), the belief of an officer of a Government Business Enterprise that a business judgment is in the best interests of the Government Business

Enterprise is rational unless the belief is one that no reasonable person in the position of the officer would hold.

(6) An officer, employee, former officer or former employee of a Government Business Enterprise must not make improper use, in Tasmania or elsewhere, of information acquired because of his or her office or employment in the Government Business Enterprise –

(a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

(b) to cause damage to the Government Business Enterprise or any of its subsidiaries.

Penalty:

Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both.

(7) An officer or employee must not make improper use, in Tasmania or elsewhere, of his or her position as an officer or employee of a Government Business Enterprise –

(a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

(b) to cause damage to the Government Business Enterprise or any of its subsidiaries.

Penalty:

Fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both.

25. Duty to prevent insolvent trading

(1) A director must prevent a Government Business Enterprise from incurring a debt if –

(a) the Government Business Enterprise is insolvent at that time or will become insolvent by incurring at that time the debt or debts which include that debt; and

(b) at that time there are reasonable grounds for suspecting that the Government Business Enterprise is insolvent or would become insolvent by incurring the debt or those debts; and

(c) the director is aware of those grounds or a reasonable person in the position of director would be aware of those grounds.

(2) A director is guilty of an offence and liable, on conviction, to a penalty of a fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both, if he or she contravenes subsection (1) knowingly, intentionally or recklessly and –

(a) dishonestly and intending to gain, directly or indirectly, an advantage for himself or herself or another person; or

(b) intending to deceive or defraud any person.

(3) It is a defence for an offence against subsection (2) or for a contravention of subsection (1) in proceedings under section 29 if it is proved –

(a) that, at the time the debt was incurred, the director –

(i) had reasonable grounds to believe and did believe that a competent and reliable person was responsible for providing the director with adequate information as to whether the Government Business Enterprise was solvent; and

(ii) had reasonable grounds to believe and did believe that the person referred to in subparagraph (i) was fulfilling the responsibility referred to in that subparagraph; and

(iii) expected, on the basis of information provided by the person referred to in subparagraph (i), that the Government Business Enterprise was solvent at that time and would remain solvent even if it incurred the debt and any other debts that it incurred at that time; or

(b) that, at the time when the debt was incurred, the director had other reasonable grounds to expect, and did expect, that the Government Business Enterprise was solvent and would remain solvent even if it incurred the debt and any other debts that it incurred at that time; or

(c) that the director took all reasonable steps to prevent the Government Business Enterprise from incurring the debt; or

(d) that the director did not take part at the time in the Government Business Enterprise's management because of illness or for some other good cause; or

(e) that the director informed the Portfolio Minister and Treasurer, before the debt was incurred, that the Government Business Enterprise was insolvent or would become insolvent if the debt or the debt and other debts were incurred; or

(f) that the debt was incurred as the direct result of a direction given under this Act to the director or the Government Business Enterprise by the Portfolio Minister and Treasurer.

26. False or misleading information

(1) An officer must not –

(a) make a statement concerning the affairs of the Government Business Enterprise or a subsidiary to a director, the Treasurer, the Portfolio Minister or the Auditor-General that the officer knows is false or misleading in a material particular; or

(b) omit from a statement concerning the affairs of the Government Business Enterprise or a subsidiary made to a director, the Treasurer, the Portfolio Minister or the Auditor-General anything without which the statement is, to the officer's knowledge, misleading in a material particular.

Penalty:

Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 2 years, or both.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

(3) An officer must not give to a director, the Treasurer, the Portfolio Minister or the Auditor-General a document containing information that the officer knows is false, misleading or incomplete in a material particular without–

(a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and

(b) giving the correct information to the recipient if the officer has, or can reasonably obtain, the correct information.

Penalty:

Fine not exceeding 25 penalty units or a term of imprisonment not exceeding 1 year, or both.

27. Reliance on information or advice

If –

(a) an officer of a Government Business Enterprise relies on information, or professional or expert advice, given or prepared by –

(i) an employee of the Government Business Enterprise who the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or

(ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or

(iii) another officer in relation to matters within the officer's authority; or

(iv) a committee of officers on which the officer did not serve in relation to matters within the committee's authority; and

(b) the reliance was made –

(i) in good faith; and

(ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the Government Business Enterprise and the complexity of the structure and operations of the Government Business Enterprise; and

(c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a duty under this Act or an equivalent general law duty – the officer's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

28. Director to disclose material personal interest

(1) A director who has or may have a material personal interest in a matter that relates to the affairs of the Government Business Enterprise must give the other directors notice of the interest except where –

(a) the interest –

(i) arises in relation to the director's remuneration as a director of the Government Business Enterprise; or

(ii) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Government Business Enterprise (but only if the contract does

not make the Government Business Enterprise or a related body the insurer); or

(iii) relates to any payment by the Government Business Enterprise or a related body in respect of an indemnity permitted under section 35; or

(iv) is in a contract, or proposed contract, with or for the benefit of, or on behalf of, a related body and arises because the director is a director of the related body; or

(v) is a beneficial interest in shares in a public company, within the meaning of the *Corporations Act 2001* of the Commonwealth, and the total number of shares in which the director has a beneficial interest does not exceed 5% of the total number of shares issued by the company; or

(b) all of the following conditions are satisfied:

(i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise to all directors under this subsection;

(ii) if after the time when notice of the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise under this subsection was given a person who was not a director of the Government Business Enterprise at that time is appointed as a director, that notice is given to the new director;

(iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(c) the director has given a standing notice of the nature and extent of the interest under section 28B and the notice is still effective in relation to the interest.

Penalty:

Fine not exceeding 500 penalty units.

(2) For the purposes of subsection (1), a body is a related body in respect of a Government Business Enterprise if –

(a) the body is a subsidiary of the Government Business Enterprise; or

(b) the Government Business Enterprise is the body's subsidiary; or

(c) the body and the Government Business Enterprise are both subsidiaries of another Government Business Enterprise.

(3) The notice of a director's material personal interest in a matter that relates to the affairs of the Government Business Enterprise must –

(a) include details of –

(i) the nature and extent of the interest; and

(ii) the relation of the interest to the affairs of the Government Business Enterprise; and

(b) be given at a meeting of the Board as soon as practicable after the director becomes aware of his or her interest in the matter.

(4) The details of the notice of a director's material personal interest in a matter that relates to the affairs of the Government Business Enterprise must be –

(a) recorded in the minutes of the meeting at which the notice is given; and

(b) provided to the Portfolio Minister and Treasurer.

(5) A contravention of subsection (1) by a director does not affect the validity of an act or proceeding of the Board or of any person (including that director) acting pursuant to any direction of the Board.

28A. Board may declare material personal interest

(1) If a Board is of the opinion that a director has a material personal interest in a matter that relates to the affairs of the Government Business Enterprise, it may pass a resolution declaring –

(a) that the director has such an interest; and

(b) the nature and extent of the interest; and

(c) the relation of the interest to the affairs of the Government Business Enterprise.

(2) If a declaration is made under subsection (1), the director declared to have a material personal interest is taken to have that interest.

(3) The details of a declaration made under subsection (1) must be provided to the Portfolio Minister and Treasurer.

(4) The making of a declaration under subsection (1) does not preclude the taking of proceedings for an offence against section 28(1) in respect of the failure of the director to give notice of the material personal interest.

28B. Standing notice of director's interest

(1) A director who has an interest, whether direct or indirect, in a matter may give the other directors of the Government Business Enterprise standing notice of the nature and extent of the interest.

(2) The standing notice may be given at any time and whether or not the matter relates to the affairs of the Government Business Enterprise at the time the notice is given.

(3) The standing notice must –

(a) include details of the nature and extent of the interest; and

(b) be given –

(i) at a meeting of the Board, either in writing or orally; or

(ii) to the other directors individually in writing.

(4) Standing notice given to the directors individually –

(a) must be tabled at the next meeting of the Board after it has been given; and

(b) is given when it has been given to every director.

(5) The details of the standing notice given at or tabled at a meeting of the Board must be –

(a) recorded in the minutes of the meeting; and

(b) provided to the Portfolio Minister and Treasurer.

(6) A standing notice –

(a) takes effect as soon as it is given; and

(b) ceases to have effect if a person who was not a director of the Government Business Enterprise at the time when the notice was given is appointed as a director.

(7) A standing notice that has ceased to have effect under subsection (6) recommences to have effect if it is given to the new director referred to in that subsection.

(8) A standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

28C. Restriction on director's participation in case of material personal interest

(1) If a director has a material personal interest in a matter being considered at a meeting of the Board, the director must not, except as allowed by the Board under subsection (4) –

(a) be present while the matter is being considered; and

(b) vote on the matter.

(2) If –

(a) a director has a material personal interest in a contract that the Government Business Enterprise has with a person; and

(b) either –

(i) the director, in compliance with subsection (1), was not present while the Board considered whether to enter into the contract and did not vote on the matter; or

(ii) the director was allowed under subsection (4) to be present while the Board considered whether to enter into the contract and to vote on the matter –

the Government Business Enterprise, by reason of the director holding that interest, cannot avoid the contract and the director is not liable to account to the Government Business Enterprise for any profits derived from that interest.

(3) If –

(a) a director has a material personal interest in a contract that the Government Business Enterprise has with a person; and

(b) the director, in contravention of subsection (1), was present while the Board considered whether to enter into the contract or voted on the matter –

the Government Business Enterprise, by reason of the director holding that interest, may avoid the contract and the director is liable to account to the Government Business Enterprise for any profits derived from that interest if the Board so determines by written notice provided to the director.

(4) If a director has a material personal interest in a matter being considered by the Board and the Board, in the absence of the director, passes a resolution that –

(a) identifies the director, the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise; and

(b) states that the interest should not disqualify the director from being present when the matter is considered by the Board or from voting on the matter –

the director may be present when the matter is considered by the Board and may vote on the matter.

(5) Nothing in subsection (4) affects the duty of the Board to provide notice of the material personal interest to the Portfolio Minister and Treasurer under section 28(4), 28A(3) or 28B(5).

28D. Director may be required to divest of material personal interest

If the Portfolio Minister and Treasurer consider that a material personal interest held by a director is such that holding the interest is not consistent with the proper discharge of his or her duties as director, the Portfolio Minister and Treasurer, jointly,

may require the director to either divest himself or herself of the interest or resign as director.

29. Civil penalty order

(1) In this section, "**court**" means a court of summary jurisdiction.

(2) If a person contravenes section 24(2), (3), (6) or (7) or section 25(1), the Government Business Enterprise or a person authorised in writing by the Portfolio Minister or Treasurer may apply to the court, within 6 years after the contravention, for an order under subsection (3).

(3) If the court is satisfied of the matters specified in subsection (3A), the court may make one or more of the following orders:

(a) an order prohibiting the person from being an officer of a Government Business Enterprise for the period specified in the order;

(b) an order that the person pay to the Treasurer an amount not exceeding \$200 000.

(3A) Before making an order under subsection (3), the court must be satisfied that –

(a) the person has contravened section 24(2), (3), (6) or (7) or section 25(1); and

(b) the contravention of that section –

(i) materially prejudices the interests of the Government Business Enterprise; or

(ii) materially prejudices the ability of the Government Business Enterprise to pay its creditors; or

(iii) is serious.

(4) The court must not make an order under subsection (3)(a) if the court is satisfied that the person is a fit and proper person to be an officer of a Government Business Enterprise despite the contravention.

(5) The court must not make an order under subsection (3)(b) if the court or any other court has ordered the person to pay punitive damages because of the act or omission constituting the contravention.

(6) In proceedings under this section, the court may relieve a person who has contravened section 24(2), (3), (6) or (7) or section 25(1) from the whole or part of a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention if the court is satisfied that—

(a) the person has acted honestly; and

(b) having regard to all the circumstances of the case (including, where appropriate, circumstances connected with the person's appointment as an officer), the person ought fairly to be excused for the contravention.

(7) An application made under subsection (2) is a civil matter and the rules of evidence and procedure that the court

applies in hearing and determining civil matters apply in relation to the hearing and determination of the application.

(7A) Proceedings may be commenced and determined under this section whether or not proceedings for an offence against section 24(2), (3), (6) or (7) or section 25(2) have been commenced or determined.

(8) The Treasurer may enforce an order made under subsection (3)(b) as if it were a judgment of the court.

30. Proceedings under this Part prevail

If, in respect of an act or omission, a person could be charged with an offence against this Part and could be found to have breached the Code of Conduct within the meaning of the *State Service Act 2000*, proceedings may only be commenced under this Part.

31. Proceedings for offence

(1) Proceedings for an offence against this Part may be commenced within 5 years after the commission of the act or omission which constitutes the offence notwithstanding any contrary provision in any other Act.

(2) Proceedings for an offence against this Part may be instituted and determined in a court of summary jurisdiction.

(3) Proceedings for an offence against this Part may be instituted by a person authorised in writing by the Portfolio Minister.

(4) Proceedings for an offence against section 24(2), (3), (6) or (7) or section 25(2) may be commenced and determined whether or not proceedings under section 29 in respect of the

contravention of section 24(2), (3), (6) or (7) or section 25(1) have been commenced or determined.

32. Effect of conviction for offence

A person is not entitled to be appointed or employed as a director or chief executive officer or to be otherwise concerned with, or take part in, the management of a Government Business Enterprise if, within the preceding 5 years –

- (a) the person was convicted of an offence against this Part; or
- (b) the person, having been sentenced to a term of imprisonment in respect of an offence against this Part, was released from prison.

33. Compensation and other payments for contravention of this Part

(1) Sections 24, 25, 26, 27 and 28 have effect in addition to any rule of law relating to the function, power or liability of a person because of the person's office or employment in a Government Business Enterprise and do not affect the right of any person to institute civil proceedings in relation to a contravention of any of those provisions.

(2) If a person is found guilty of an offence against section 24(2), (3), (6) or (7) or section 25(2) or an order is made under section 29(3) in respect of a contravention of section 24 or 25, the court making that finding or order may, in addition to any other penalty it may impose or order it may make, order the person to pay to a Government Business Enterprise or subsidiary–

(a) any profit made by the person as a result of the contravention of section 24 or 25; and

(b) an amount equal to any loss and damage the Government Business Enterprise or subsidiary suffered as a result of the contravention of section 24 or 25.

(3) The Government Business Enterprise or subsidiary may enforce an order made under subsection (2) as if it were a judgment of the court.

34. Indemnifying officers

(1) A Government Business Enterprise must not exempt a person, whether directly or through an interposed person, from a liability to –

(a) that Government Business Enterprise; or

(b) a subsidiary of that Government Business Enterprise – incurred as an officer.

(2) A subsidiary of a Government Business Enterprise must not exempt a person, whether directly or through an interposed person, from a liability to –

(a) that subsidiary; or

(b) that Government Business Enterprise; or

(c) another subsidiary of that Government Business Enterprise – incurred as a person who is concerned with, or takes part in, the management of that subsidiary, Government Business Enterprise or other subsidiary.

(3) A Government Business Enterprise or subsidiary of a Government Business Enterprise must not indemnify a person, whether by agreement or by making a payment and whether directly or through an interposed person, against any of the following liabilities incurred as an officer of the Government Business Enterprise:

(a) a liability owed to the Government Business Enterprise, that subsidiary or another subsidiary of that Government Business Enterprise;

(b) a liability to pay compensation under an order made under section 33;

(c) a liability that is owed to someone other than that Government Business Enterprise, that subsidiary or another subsidiary of that Government Business Enterprise and that did not arise out of conduct in good faith.

(4) Subsection (3) does not apply to a liability for legal costs.

(5) A Government Business Enterprise or subsidiary of a Government Business Enterprise must not indemnify a person, whether by agreement or by making a payment and whether directly or through an interposed person, against legal costs incurred in defending an action for a liability incurred as an officer of that Government Business Enterprise if the costs are incurred –

(a) in defending or resisting proceedings in which the person is found to have a liability for which he or she could not be indemnified under subsection (3); or

(b) in defending or resisting proceedings for an offence in which the person is found guilty.

(6) For the purposes of subsection (5), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

(7) An instrument is void so far as it provides for a Government Business Enterprise to do something that is prohibited by this section.

(8) The *Statutory Authorities (Protection from Liability of Members) Act 1993* does not apply in respect of a Government Business Enterprise or its directors or chief executive officer.

35. Premiums for certain liabilities of officers

(1) A Government Business Enterprise may pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the Government Business Enterprise against a liability other than a liability –

(a) incurred by the person as an officer; and

(b) arising out of conduct involving –

(i) a wilful breach of duty in relation to the Government Business Enterprise; or

(ii) without limiting subparagraph (i), a contravention of section 24(3) or (4).

(2) Under subsection (1), a Government Business Enterprise may pay or agree to pay a premium in relation to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome regardless of whether those costs are incurred in respect of conduct referred to in subsection (1)(b).

(2A) This section applies to a premium whether it is paid directly or through an interposed person.

(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

PART 6 - Charters and plans

Division 1 - Ministerial charter

36. Ministerial charter

(1) Within 3 months after a statutory authority becomes a Government Business Enterprise, the Portfolio Minister and Treasurer, jointly, must provide the Government Business Enterprise with a ministerial charter.

(2) The Portfolio Minister and Treasurer, jointly, may at any time at their own discretion or on receipt of an application of a Government Business Enterprise—

(a) amend a ministerial charter; or

(b) revoke a ministerial charter and substitute another ministerial charter.

(3) Before or while preparing a ministerial charter or an amendment to a ministerial charter, the Portfolio Minister and

Treasurer, jointly, must consult with the Government Business Enterprise.

(4) A ministerial charter and any amendment to a ministerial charter is to be in writing and signed by the Portfolio Minister and Treasurer.

(5)

(6) A ministerial charter or any amendment to a ministerial charter takes effect on a day specified in it, being a day not earlier than the day on which it is provided to the Government Business Enterprise.

(7) The Portfolio Minister must cause a copy of a ministerial charter and any amendment to it to be laid before each House of Parliament within 10 sitting days after it has been signed as required by subsection (4).

37. Contents of ministerial charter

(1) A ministerial charter is to specify the broad policy expectations of the Portfolio Minister and Treasurer for the Government Business Enterprise and its subsidiaries.

(2) A ministerial charter may limit the functions and powers of the Government Business Enterprise and the performance and exercise of those functions and powers, but –

(a) may not prevent the Government Business Enterprise from performing a function it is required to perform or otherwise complying with any Act; and

(b) may not extend the functions and powers of the Government Business Enterprise.

38. Compliance with ministerial charter

The Board must ensure that the business and affairs of the Government Business Enterprise and its subsidiaries are conducted in a manner that is consistent with the ministerial charter.

Division 2 - Plans of a Government Business Enterprise

39. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Government Business Enterprise and its subsidiaries.

(2) The corporate plan is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the ministerial charter for the Government Business Enterprise.

(3) The Board must provide a draft of the corporate plan to the Portfolio Minister and Treasurer not later than 60 days before the day on which the corporate plan will take effect.

(3A) The Portfolio Minister or the Treasurer may authorise the Board to provide the draft of a corporate plan under subsection (3) by a day that is later than the day specified in that subsection.

(4) When a draft corporate plan is approved by both the Portfolio Minister and Treasurer it becomes the corporate plan of the Government Business Enterprise.

(5) The Portfolio Minister and Treasurer, jointly, must approve a corporate plan, prepared in accordance with this section and section 40.

(6) A corporate plan takes effect on the first day of the financial year next commencing after its approval by the Portfolio Minister and Treasurer or, if a day for its commencement is specified in that approval, on that day.

(7) A Board may prepare an amendment of its corporate plan at any time.

(7A) An amendment to a corporate plan may be in the form of a new corporate plan that replaces the existing corporate plan.

(8) An amendment of a corporate plan takes effect –

(a) when it has been approved by both the Portfolio Minister and Treasurer; or

(b) if a day for its commencement is specified in the approval of the Portfolio Minister and Treasurer, on that day.

(9) The approval of an amendment of a corporate plan may specify that the amendment is to take effect on –

(a) the day when it has been approved by both the Portfolio Minister and Treasurer; or

(b) a later day; or

(c) an earlier day.

(10) Except where the Portfolio Minister and Treasurer jointly approve otherwise, a Government Business Enterprise must act in accordance with its corporate plan or amended corporate plan and ensure that a subsidiary acts in accordance with that corporate plan or amended corporate plan.

40. Consultation with Portfolio Minister and Treasurer

(1) In the course of preparing a draft corporate plan, the Board must consult –

(a) in relation to the interests of the State as a whole and the long term objectives of the Government Business Enterprise and its subsidiaries, jointly with the Portfolio Minister and Treasurer; and

(b) in relation to the financial performance objectives of the Government Business Enterprise and its subsidiaries, jointly with the Portfolio Minister and the Treasurer.

(2) The Portfolio Minister and Treasurer, jointly, may give a direction to the Board–

(a) in relation to a long term objective of the Government Business Enterprise and its subsidiaries; or

(b) if the Portfolio Minister and Treasurer consider the draft corporate plan to be inconsistent with the ministerial charter, in relation to that inconsistency.

(3) The Portfolio Minister and the Treasurer jointly may give a direction to the Board in relation to the financial

performance objectives of the Government Business Enterprise and its subsidiaries.

(4) Subject to subsection (5), the Board must comply with a direction given under this section if it is in writing and is signed by both the Portfolio Minister and Treasurer.

(5) A direction has no effect in respect of a contract entered into by the Government Business Enterprise before the direction was given if compliance with the direction would result in the Government Business Enterprise failing to perform the contract.

(6) The recommendation of a dividend under section 83 is a financial performance objective for the purposes of this section.

41. Statement of corporate intent

(1) The statement of corporate intent of a Government Business Enterprise is a summary of its corporate plan.

(2) The statement of corporate intent of a Government Business Enterprise must not disclose any information which the Portfolio Minister and Treasurer, jointly, consider may, if disclosed—

(a) disadvantage or cause damage to the Government Business Enterprise or any subsidiary, directly or indirectly; or

(b) enable another person, directly or indirectly, to gain an advantage.

(3) The statement of corporate intent is to be in a form and contain the information specified in the Treasurer's Instructions.

42. Validity of actions, &c.

Anything done by or in relation to a Government Business Enterprise or subsidiary is not void or unenforceable only because the Government Business Enterprise has contravened this Part.

PART 7 - Financial affairs of Government Business Enterprise generally

43. Authorised deposit-taking institution accounts

A Government Business Enterprise may open and operate such authorised deposit-taking institution accounts as it considers necessary.

44. Investment

Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, a Government Business Enterprise may invest any funds held by it and any interest accumulated in respect of those funds in any manner which is consistent with –

- (a) sound commercial practice; and
- (b) the Treasurer's Instructions.

45. Borrowing from Treasurer

(1) The Treasurer may lend to a Government Business Enterprise, out of money provided by Parliament for the purpose, such money as the Treasurer considers appropriate.

(2) Before making a loan to a Government Business Enterprise, the Treasurer must consult with the Portfolio Minister.

(3) If a Government Business Enterprise applies for a loan in respect of a loss incurred by it or any of its subsidiaries, in determining whether to make the loan the Treasurer must consider –

- (a)** the amount of the loss; and
- (b)** the reasons for the loss; and
- (c)** the consequences of the loss; and
- (d)** any other matter the Treasurer considers relevant.

(4) In determining the consequences of a loss, the Treasurer must consider –

- (a)** the impact of the loss on the liquidity position of the Government Business Enterprise and all of its subsidiaries; and
- (b)** the availability of reserves to meet the loss; and
- (c)** the impact of the loss on the viability of the Government Business Enterprise and all of its subsidiaries.

(5) A loan is subject to the conditions determined by the Treasurer.

(6) An amount lent under subsection (1) and any interest or other charge payable in respect of the loan is a debt repayable into the Consolidated Fund by the Government Business Enterprise to which the amount was lent.

(7) If the Government Business Enterprise to which the amount was lent is unable to repay the debt, the Government

Business Enterprise and all its prescribed subsidiaries are jointly and severally liable to repay it.

(8) For the purposes of subsection (7), "**prescribed subsidiary**" means a subsidiary that is –

(a) a statutory authority; or

(b) a corporation incorporated under the Corporations Act, all the shares of which are beneficially owned by the Crown, the Government Business Enterprise or another such subsidiary.

46. Capital contribution by Treasurer

(1) The Treasurer may pay an amount to a Government Business Enterprise as a contribution to its reserves out of money provided by Parliament for the purpose.

(2) An amount paid under subsection (1) is not a borrowing and is not subject to the payment of interest.

47. Borrowing from person other than Treasurer

(1) Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, a Government Business Enterprise may borrow, or otherwise obtain financial accommodation, from a person other than the Treasurer for the purposes of performing its functions and achieving its objectives.

(2) A Government Business Enterprise may use all or part of its assets as security for a borrowing or financial accommodation obtained by it under subsection (1) and any interest or charges payable in respect of that financial accommodation.

(3) On the request of the Portfolio Minister, the Treasurer may guarantee the payment or repayment to a person from which a Government Business Enterprise borrows or obtains financial accommodation under subsection (1) of any one or more of the following:

(a) the amount borrowed or credit obtained;

(b) any interest payable in respect of the amount borrowed or financial accommodation;

(c) any charges relating to the borrowing or financial accommodation;

(d) any expenses of that person incurred in relation to the borrowing or financial accommodation and which are payable by the Government Business Enterprise.

(4) A guarantee is subject to the conditions determined by the Treasurer.

(5) A payment or repayment which is required to be made under a guarantee is payable out of the Consolidated Fund without further appropriation than this section.

(6) If the Treasurer makes any payment or repayment under a guarantee, an amount equal to the amount so paid or repaid, and any interest or other charge payable by a Government Business Enterprise in accordance with the conditions to which the guarantee is subject, is a debt repayable by the Government Business Enterprise into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.

(7) A creditor may not enforce a guarantee against the Treasurer until the creditor has exercised all his, her or its rights

and remedies under all securities held in respect of the payment or repayment guaranteed.

48. Financial arrangements

(1) Subject to subsection (2), a Government Business Enterprise may enter into and deal in financial arrangements.

(2) The Treasurer may, by notice provided to a Government Business Enterprise, specify that the Government Business Enterprise must not enter into or deal in a financial arrangement as provided by, or in the circumstances specified in, the notice.

(3) The Board must ensure that any financial arrangement entered into, or dealt in, by the Government Business Enterprise is entered into and performed, or dealt in, in accordance with the Treasurer's Instructions.

49. Effect of Financial Agreement Act 1994

Where the Treasurer, under section 5 (1) of the *Financial Agreement Act 1994*, requires a Government Business Enterprise to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Government Business Enterprise must comply with that requirement.

50. Government Business Enterprise or subsidiary not exempt from State charges

A Government Business Enterprise or subsidiary is not exempt from a State charge merely because it is or may be the Crown.

PART 8 - Accounting records, financial statements and reports of Government Business Enterprises

51. Accounting records

A Government Business Enterprise must –

(a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and

(b) keep those records in a manner that –

(i) allows true and fair accounts of the Government Business Enterprise to be prepared from time to time; and

(ii) allows its accounts to be conveniently and properly audited or reviewed; and

(iii) subject to the Treasurer's Instructions, complies with Australian Accounting Standards; and

(iv) complies with any relevant Treasurer's Instructions; and

(c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or such other period as the Treasurer determines.

52. Financial statements

(1) Within 45 days after the end of the financial year, a Board must–

(a) prepare the financial statements of the Government Business Enterprise relating to that financial year; and

(b) if the Government Business Enterprise has subsidiaries, prepare consolidated financial statements in respect of the Government Business Enterprise and all its subsidiaries relating to that financial year; and

(c) provide the Auditor-General with the Government Business Enterprise's financial statements and the consolidated financial statements.

(2)

(3) The financial statements must –

(a) contain the documents, statements and information required by, and otherwise comply with, the Treasurer's Instructions; and

(b) subject to the Treasurer's Instructions, comply with Australian Accounting Standards; and

(c) be signed or certified as specified in the Treasurer's Instructions.

(4) The Portfolio Minister and Treasurer, jointly, may direct a Board to include in the financial statements any financial information that they consider appropriate.

53.

54. Opinion of Auditor-General

The Auditor-General must provide a Board, the Portfolio Minister and the Treasurer with a copy of his or her opinion in respect of the financial statements of the Government Business

Enterprise given under section 40 of the *Financial Management and Audit Act 1990*.

55. Annual report

(1) A Board must prepare for the Government Business Enterprise an annual report for each financial year.

(2) The annual report must contain –

(a) the details of any direction given under section 65; and

(b) the details of any direction relating to a dividend, interim dividend or special dividend; and

(c) the details of any direction given under section 40(2) or (3); and

(d) the details of any waiver granted under Part 10 or 11; and

(e) the documents, statements and information required by the Treasurer's Instructions.

(3) The annual report must comply with the Treasurer's Instructions.

(4) The Portfolio Minister and the Treasurer, jointly, may direct a Board to include in the annual report any information that they consider appropriate.

(5)

(6) A Board must provide the annual report to the Portfolio Minister, the Treasurer and the Auditor-General.

(7) Section 36 of the State Service Act 2000 does not apply in respect of a Government Business Enterprise that is an Agency.

56. Tabling of annual report

(1) The Portfolio Minister must lay a copy of the annual report of a Government Business Enterprise before each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(2) Where the Portfolio Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, he or she must, before the expiration of that period, lay before each House of Parliament a statement specifying the reasons for the failure to comply with that subsection and an estimate of the day by which a copy of the annual report will be ready to lay before each House of Parliament.

(3) Where the Portfolio Minister is unable to lay a copy of the annual report of a Government Business Enterprise before a House of Parliament within the period specified in subsection (1) or by the day specified in a statement referred to in subsection (2) because either House of Parliament is not sitting at the expiration of that period or on that day, the Portfolio Minister must –

(a) immediately after the expiration of that period or that day, forward a copy of the annual report to the Clerk of that House of Parliament; and

(b) within the next 7 sitting days of that House, lay a copy of the annual report before that House.

(4) Where the Portfolio Minister fails to lay a copy of the annual report of a Government Business Enterprise before at least one House of Parliament within the period specified in subsection (1), the Parliamentary Standing Committee of Public Accounts may examine, and report to both Houses of Parliament on, the Government Business Enterprise's accounting records, financial statements and other available information referred to in section 55(2) as if they or it were accounts referred to in section 6 (1) (b) of the *Public Accounts Committee Act 1970*.

57. Quarterly reports

(1) A Board must prepare a report on the operations of the Government Business Enterprise and its subsidiaries for each of the first 3 quarters of a financial year.

(2) A quarterly report must be provided to the Portfolio Minister and Treasurer—

(a) within 30 days after the end of the quarter; or

(b) if another period after the end of the quarter is agreed between the Board, Portfolio Minister and Treasurer, within the agreed period.

(3) A quarterly report must include the information required to be given in the report by the Treasurer's Instructions.

58. Additional information

(1) The Portfolio Minister and the Treasurer, jointly, may require a Government Business Enterprise to provide to the Minister specified in the requirement information relating to the

affairs, or the performance and exercise of the functions and powers, of the Government Business Enterprise or any of its subsidiaries.

(2) A Government Business Enterprise must comply with a requirement made under subsection (1).

PART 9 - Community service obligations

59. Community service obligation defined

In this Part, "**community service obligation**" means a function, service or concession –

(a) declared to be a community service obligation under section 61; or

(b) performed, provided or allowed as the direct result of a direction given under section 65(1).

60. Application for declaration of community service obligation

(1) On the request of the Board, the Portfolio Minister may apply to the Treasurer for a declaration that–

(a) a function performed, service provided or concession allowed by a Government Business Enterprise is a community service obligation; or

(b) a function, service or concession the Government Business Enterprise proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) The request of the Board is to be in a form, and contain the details, specified in the Treasurer's Instructions.

(3) The Portfolio Minister must not agree to the request of the Board unless he or she is satisfied that performing, providing or allowing the function, service or concession which is the subject of the request is or will be a net cost to the Government Business Enterprise.

(4) Where the Portfolio Minister agrees to the request of the Board, the request becomes an application for the declaration of a community service obligation.

(5) On receipt of an application, the Treasurer may request the Portfolio Minister to provide further information and documents.

61. Declaration of community service obligation

(1) In this section, "**prescribed period**" means –

(a) the period of 60 days after the Treasurer receives an application under section 60; or

(b) if the Treasurer has required under section 60(5) that further information or documents be provided, the period of 60 days after receiving the required information or documents; or

(c) such further period as the Treasurer and Portfolio Minister jointly agree.

(2) Within the prescribed period the Treasurer must declare that the function, service or concession to which the application relates is or is not a community service obligation.

(3) After consulting with the Portfolio Minister, the Treasurer must, and may only, declare a function, service or concession to be a community service obligation if the Treasurer is satisfied—

(a) that the function, service or concession is, or will be, performed, provided or allowed—

(i) as the result of a direction given to the Government Business Enterprise under this or any other Act; or

(ii) as the result of a specific requirement by or under this or any other Act; and

(b) that the function, service or concession would not have been performed, provided or allowed if the Government Business Enterprise were a business in the private sector acting in accordance with sound commercial practice.

(4) A declaration under subsection (2) takes effect on the day specified in the declaration.

62. Costing basis for community service obligation

(1) The Treasurer and the Portfolio Minister must jointly agree a costing basis for a community service obligation after consulting with the Government Business Enterprise.

(2) The costing basis must be in accordance with the Treasurer's Instructions and is to be provided to the Government Business Enterprise.

63. Funding of community service obligation

(1) The method and basis on which a Government Business Enterprise will be funded in whole or in part for undertaking a community service obligation is to be determined by the Treasurer in accordance with the Treasurer's Instructions.

(2) Before determining the method and basis on which a Government Business Enterprise will be funded, the Treasurer is to consult the Portfolio Minister and the Government Business Enterprise.

64. Review of costing basis and funding arrangement

(1) The Treasurer must review annually the costing basis and the method and basis on which the undertaking of a community service obligation is funded, having particular regard to the efficiency and effectiveness of the Government Business Enterprise in undertaking the community service obligation.

(2) As part of the review, the Treasurer must consult with the Portfolio Minister and Government Business Enterprise.

(3) On completion of the review of a costing basis, the Treasurer and Portfolio Minister, jointly, may—

(a) amend the costing basis; or

(b) revoke the costing basis and substitute a new costing basis.

(4) On completion of the review of the method and basis on which the undertaking of a community service obligation is funded, the Treasurer may—

(a) amend the method and basis; or

(b) revoke the method and basis and substitute a new method and basis.

64A. Amendment or revocation of declaration of community service obligation

(1) The Treasurer may amend or revoke, by notice provided to the Government Business Enterprise and the Portfolio Minister, a declaration made under section 61(3).

(2) Before amending or revoking a declaration made under section 61(3), the Treasurer must consult with the Board and the Portfolio Minister.

(3) The amendment or revocation of a declaration made under section 61(3) takes effect on the day specified in the notice referred to in subsection (1).

65. Ministerial direction to perform community service obligation

(1) The Portfolio Minister and Treasurer, jointly, may give a direction to a Government Business Enterprise to perform, provide or allow a function, service or concession that they are satisfied would not be performed, provided or allowed if the Government Business Enterprise were a business in the private sector acting in accordance with sound commercial practice.

(2) A Government Business Enterprise must comply with a direction given under subsection (1).

(3) The Portfolio Minister and Treasurer, jointly, may amend or revoke a direction given under subsection (1).

(4) The amendment or revocation must specify the date on which it takes effect.

(5) Within 21 days after receiving a direction given under subsection (1), the Government Business Enterprise may object to the direction on any ground.

(6) An objection –

(a) is to be in writing; and

(b) is to specify the grounds for the objection; and

(c) is to be provided to the Portfolio Minister and Treasurer.

(7) If, on receiving an objection, the Portfolio Minister and Treasurer, jointly, determine that the direction is not to be withdrawn or amended, they must cause a copy of the direction and the objection to be laid before each House of Parliament within 5 sitting days after receipt of the objection.

PART 10 - Tax equivalents payable by Government Business Enterprise and subsidiary

Division 1 - Preliminary

66. Application of Part 10

This Part applies only in relation to –

(a) a Government Business Enterprise specified in Schedule 2;
and

(b) a subsidiary of such a Government Business Enterprise.

67. Interpretation of Part 10

(1) In this Part –

"non-prescribed Government Business Enterprise" means a Government Business Enterprise that is not a prescribed Government Business Enterprise;

"non-prescribed subsidiary" means a subsidiary of a Government Business Enterprise that is not a prescribed subsidiary;

"NTER Agreement" means the National Tax Equivalent Regime Memorandum of Understanding entered into by the Treasurer on behalf of the State on 16 JULY 2001, as amended from time to time;

"prescribed Government Business Enterprise" means a Government Business Enterprise that is declared under subsection (2) to be a prescribed Government Business Enterprise;

"prescribed subsidiary" means a subsidiary of a Government Business Enterprise that is declared under subsection (3) to be a prescribed subsidiary.

(2) The Treasurer may declare a Government Business Enterprise to be a prescribed Government Business Enterprise and the declaration is to be issued as a Treasurer's Instruction.

(3) The Treasurer may declare a subsidiary of a Government Business Enterprise to be a prescribed subsidiary and the declaration is to be issued as a Treasurer's Instruction.

(4) The Treasurer may amend or revoke a declaration made under subsection (2) or (3) and the amendment or revocation is to be issued as a Treasurer's Instruction.

(5) Despite section 114(4), a declaration under subsection (2) or (3) for the purposes of the NTER Agreement may take effect on 1 JULY 2001 or a later day specified in the declaration.

Division 2 - Liability to pay income tax equivalent

68. Liability to pay income tax equivalent

(1) Each Government Business Enterprise and each subsidiary of a Government Business Enterprise is liable to pay into the Consolidated Fund an income tax equivalent in respect of each financial year.

(2) Despite subsection (1), a Government Business Enterprise or subsidiary is not liable to pay an income tax equivalent to the extent to which it is liable to pay income tax under the Commonwealth Tax Act.

Division 3 - Payment, &c., of income tax equivalents by prescribed Government Business Enterprises and prescribed subsidiaries

69. Agreements in respect of payment of income tax equivalent by prescribed Government Business Enterprise and prescribed subsidiary

(1) The Treasurer, on behalf of the State, may enter into an agreement in respect of the calculation, determination and payment of, and all other matters relevant to, the income tax

equivalents which prescribed Government Business Enterprises and prescribed subsidiaries are liable to pay under section 68.

(2) The Treasurer, on behalf of the State, may enter into an agreement amending or revoking an agreement entered into under subsection (1).

(3) An agreement entered into under subsection (1) or (2) may take effect on the first day of the financial year in which it is made or a later day.

(4) The NTER Agreement is taken to be an agreement entered into under subsection (1) and is taken to have taken effect on 1 JULY 2001.

(5) Any act or omission done under, or for the purposes of giving effect to, the NTER Agreement before the *Government Business Enterprises Amendment Act 2001* receives the Royal Assent is not invalid or ineffective merely because it was done before that Act receives the Royal Assent.

70. Application of agreement

(1) The Treasurer may issue Treasurer's Instructions relating to the implementation of an agreement entered into under section 69(1) or (2).

(2) Despite section 114(4), Treasurer's Instructions issued under subsection (1) may take effect on the first day of the financial year in which the agreement is made or a later day.

(3) Treasurer's Instructions issued in respect of the implementation of the NTER Agreement before the *Government Business Enterprises Amendment Act 2001* receives the Royal Assent are taken to have been validly issued under subsection (1).

Division 3A - Payment, &c., of income tax equivalents by non-prescribed Government Business Enterprises and non-prescribed subsidiaries

71. Payment of income tax equivalent

(1) Subject to this Act and the Treasurer's Instructions, the Commonwealth Tax Act applies in respect of the calculation, determination and payment of, and all other matters relevant to, an income tax equivalent which a non-prescribed Government Business Enterprise or a non-prescribed subsidiary is liable to pay as if –

(a) the Treasurer or his or her delegate were the Commonwealth Commissioner of Taxation; and

(b) the Government Business Enterprise or subsidiary were a corporation incorporated under the Corporations Act that is required to comply with the Commonwealth Tax Act; and

(c) the income tax equivalent were the amount of income tax that would be payable by such a corporation under the Commonwealth Tax Act.

(2) The Treasurer, in addition to any other rulings that he or she could make by virtue of the application of subsection (1), may, in respect of an income tax equivalent or for the purpose of determining whether an income tax equivalent is payable, specify whether an aspect of the Commonwealth Tax Act can be applied in relation to the calculation, determination and payment of an income tax equivalent payable by a particular non-prescribed Government Business Enterprise, a particular non-prescribed subsidiary or non-prescribed Government Business

Enterprises and non-prescribed subsidiaries generally and, if it can be applied, how it is to be applied.

72. Estimate of income tax equivalent

(1) Not less than 30 days before the end of a financial year, a non-prescribed Government Business Enterprise and a non-prescribed subsidiary must provide to the Treasurer an estimate of the amount of income tax equivalent that is likely to be payable in respect of that financial year.

(2) The estimate is to be in the form and contain the information required by the Treasurer's Instructions.

(3) The Treasurer may direct the non-prescribed Government Business Enterprise or the non-prescribed subsidiary to pay the whole or part of the amount estimated under subsection (1) into the Consolidated Fund at the times, and in the manner, specified in the direction.

73. Penalty for late payment

(1) If a non-prescribed Government Business Enterprise or a non-prescribed subsidiary does not pay the whole or any part of the amount it is directed to pay under section 72(3) by the day on which it is due, the amount unpaid bears interest at 1.5 times the prescribed rate from that day to and including the day on which it is paid.

(2) A non-prescribed Government Business Enterprise or a non-prescribed subsidiary is not liable to pay interest under subsection (1) if the Treasurer determines otherwise.

74. Objections

(1) A non-prescribed Government Business Enterprise or a non-prescribed subsidiary aggrieved by a determination or calculation made under this Part or a ruling may lodge an objection with the Treasurer within 60 days after the Government Business Enterprise or subsidiary receives notice of the determination, calculation or ruling giving rise to the objection.

(2) A non-prescribed Government Business Enterprise or a non-prescribed subsidiary which has lodged an objection may submit to the Treasurer written submissions and other information for his or her consideration in determining the objection.

(3) The Treasurer may inform himself or herself on any matter relevant to an objection in such manner as he or she considers appropriate.

(4) At the determination of an objection, the Treasurer may –

(a) dismiss the objection; or

(b) uphold the objection and amend or revoke the determination, calculation or ruling which is the subject of the objection.

(5) Subject to this section, an objection is to be instituted, considered and determined as specified in the Treasurer's Instructions.

(6) The decision of the Treasurer under subsection (4) is final.

(7) Any appeal, objection or review process provided for in or under the Commonwealth Tax Act is not available to a non-

prescribed Government Business Enterprise or a non-prescribed subsidiary.

74A. Agreement to administer payment, &c., of income tax equivalent

(1) The Treasurer may enter into an agreement with a person in respect of the performance and exercise of the Treasurer's functions and powers under this Division for and on behalf of the Treasurer.

(2) The Treasurer may enter into an agreement amending or revoking an agreement entered into under subsection (1).

Division 4 - Miscellaneous

75. Waiver of income tax equivalent

(1) A Portfolio Minister may request the Treasurer to waive the payment by a Government Business Enterprise or subsidiary of the whole or any part of a payment due under this Part.

(2) On receiving a request, the Treasurer may –

(a) refuse to grant the request; or

(b) waive that payment or part of that payment.

(3) Where the Treasurer has waived the whole or part of a payment, the Treasurer must determine any conditions to which that waiver is subject.

(4) Without limiting the conditions which the Treasurer may determine under subsection (3), the Treasurer may determine

that a waiver is subject to the Government Business Enterprise or subsidiary paying into the Consolidated Fund, at the times and in the manner determined by the Treasurer, an alternative return specified by the Treasurer.

(5) Where the Treasurer has waived the whole or any part of a payment, the Treasurer must notify the following person of that waiver:

(a) in the case of a prescribed Government Business Enterprise or a prescribed subsidiary, the person administering the scheme relating to the payment of income tax equivalents established by an agreement under section 69;

(b) in the case of a non-prescribed Government Business Enterprise or a non-prescribed subsidiary and where the Treasurer has entered into an agreement under section 74A, the person who under that agreement is performing and exercising the Treasurer's functions and powers under Division 3A.

76.

PART 11 - Guarantee fees and dividends payable by Government Business Enterprise

Division 1 - Guarantee fees

77. Application of Division 1

This Division applies only in relation to a Government Business Enterprise specified in Schedule 3.

78. Guarantee fees

(1) A Government Business Enterprise must pay an annual guarantee fee into the Consolidated Fund.

(2) The guarantee fee in respect of a financial year is calculated by multiplying the guarantee fee rate determined under subsection (3) and the amount of the financial accommodation utilised by the Government Business Enterprise and all its subsidiaries as at the end of the preceding financial year or such other date that is specified in the Treasurer's Instructions.

(3) The Treasurer must determine a guarantee fee rate for each Government Business Enterprise and must notify each Government Business Enterprise of the guarantee fee rate applicable to it.

(4) The guarantee fee rate must not exceed the prescribed percentage.

(5) A Government Business Enterprise must –

(a) provide to the Treasurer guarantee fee returns in the form and at the times specified in the Treasurer's Instructions; and

(b) pay its guarantee fee at the times, and in the manner, specified in the Treasurer's Instructions.

79. Variation of guarantee fee

(1) In this section –

"original guarantee fee" means the guarantee fee calculated under section 78(2) by the Government Business Enterprise for a financial year;

"varied guarantee fee" means the guarantee fee as varied under subsection (2).

(2) If the Treasurer is satisfied that an original guarantee fee has been calculated incorrectly, the Treasurer may vary it.

(3) If a Government Business Enterprise has paid the whole or part of an original guarantee fee and that whole or part as paid is greater than the varied guarantee fee –

(a) the difference between the amount so paid and the varied guarantee fee accrues interest at the prescribed rate from the date of that payment; and

(b) the Treasurer –

(i) must offset the difference and any interest accrued on that difference against any other payment that is due, or will become due within 3 months after the determination of the varied guarantee fee, to be paid into the Consolidated Fund by the Government Business Enterprise under this Act; or

(ii) if at the end of that 3 month period the whole or part of the difference and interest is unable to be so offset, must pay that remaining whole or part of the difference and interest and any further interest accrued to the Government Business Enterprise.

(4) If the original guarantee fee is less than a varied guarantee fee –

(a) the difference accrues interest at the prescribed rate from the date on which the original guarantee fee is paid; and

(b) the Government Business Enterprise must pay the difference and any interest accrued on the difference into the Consolidated Fund in the manner, and at the times, determined by the Treasurer.

(5) This Act applies in relation to a varied guarantee fee that is greater than the original guarantee fee as if it were an original guarantee fee which was payable by the latest day determined by the Treasurer under subsection (4)(b).

80. Penalty for late payment of guarantee fee

(1) If a Government Business Enterprise does not pay the whole or any part of a guarantee fee into the Consolidated Fund by the day on which that payment is required to be made under this Division, the Government Business Enterprise must pay into the Consolidated Fund a penalty in the form of interest at 1.5 times the prescribed rate on the amount which is due and unpaid from that day to and including the day on which it is paid.

(2) A Government Business Enterprise is not liable to pay a penalty under subsection (1) if the Treasurer determines otherwise.

81. Deferral or waiver of payment

(1) The Portfolio Minister may request the Treasurer to defer or waive the payment by a Government Business Enterprise of the whole or any part of a payment due under this Division.

(2) On receiving a request, the Treasurer may –

(a) refuse to grant the request; or

(b) defer the payment to which the request relates or part of that payment; or

(c) waive that payment or part of that payment.

(3) Where the Treasurer has deferred the whole or part of a payment, the Treasurer must determine the conditions to which that deferral is subject.

(4) Where the Treasurer has waived the whole or part of a payment, the Treasurer must determine the conditions to which that waiver is subject.

(5) Without limiting the conditions that the Treasurer may determine under subsection (4), the Treasurer may determine that a waiver is subject to the Government Business Enterprise paying into the Consolidated Fund, at the times and in the manner determined by the Treasurer, an alternative return specified by the Treasurer.

Division 2 - Dividends

82. Application of Division 2

This Division applies only in relation to a Government Business Enterprise specified in Schedule 4.

83. Recommendation for dividend payable

(1) Within 60 days after the end of each financial year, the Board must advise the Treasurer and the Portfolio Minister of its recommendation for a dividend payable by the Government Business Enterprise in respect of that financial year.

(2) In a recommendation for a dividend, the Board is to make the following recommendations:

(a) whether or not the Government Business Enterprise should pay a dividend in respect of a financial year; and

(b) if the Board recommends that a dividend should be paid, the amount of that dividend.

84. Determination of dividend

(1) Within 60 days of receiving a recommendation under section 83(1), the Treasurer and Portfolio Minister, jointly, must—

(a) approve the recommendation; or

(b) direct that no dividend be paid; or

(c) direct that an amount of dividend different from that recommended by the Board be paid.

(2) The Treasurer and Portfolio Minister must not approve a recommendation that would result in a Government Business Enterprise being required to pay a dividend that exceeds the profit of the Government Business Enterprise.

(2A) The Treasurer and Portfolio Minister must not make a direction that would result in a Government Business Enterprise being required to pay a dividend that exceeds the profit of the Government Business Enterprise for the financial year to which the dividend relates.

(3) As soon as practicable after a recommendation is approved, or a direction is given, under subsection (1), the Government Business Enterprise must be notified of the approval or direction.

(4) At the request of the Board, the Treasurer and Portfolio Minister, jointly, may amend, revoke or substitute an approval or direction made under subsection (1) by notice provided to the Government Business Enterprise.

85. Interim dividend

(1) At any time after the completion of the first 6 months of a financial year, the Treasurer and the Portfolio Minister, jointly, may require a Board by notice provided to it to make a recommendation for the payment of an interim dividend on account of the dividend that may become payable for that financial year.

(2) Within 30 days after receiving notice under subsection (1), the Board must make a recommendation for the payment of an interim dividend to the Treasurer.

(3) Within 30 days after receiving a recommendation under subsection (2), the Treasurer and Portfolio Minister, jointly, must—

(a) approve the recommendation; or

(b) direct that no interim dividend be paid; or

(c) direct that an amount of interim dividend different from that recommended by the Board be paid.

(4) The Treasurer and Portfolio Minister must not approve a recommendation or make a direction that would result in a Government Business Enterprise being required to pay an interim dividend that exceeds the estimated profit of the Government Business Enterprise for the first 6 months of a financial year.

(5) As soon as practicable after a recommendation is approved, or a direction is given, under subsection (3), the Government Business Enterprise must be notified of the approval or direction.

(6) At the request of the Board, the Treasurer and Portfolio Minister, jointly, may amend, revoke or substitute an approval or direction made under subsection (3) by notice provided to the Government Business Enterprise.

86. Special dividend

(1) The Portfolio Minister and Treasurer, jointly, may direct a Government Business Enterprise, by notice provided to it, to pay a special dividend.

(2) The Portfolio Minister and Treasurer must not give a direction under subsection (1) unless they have consulted with the Government Business Enterprise and are satisfied that the Government Business Enterprise has sufficient liquid assets to meet the special dividend and its contingent and financial needs during the period covered by its corporate plan.

(3) A direction to pay a special dividend may be given regardless of whether the Government Business Enterprise is likely to make a profit during the financial year in which the special dividend is payable.

(4) A special dividend is in addition to any other dividend that is payable under this Division.

(5) Within 5 sitting days after giving a direction under subsection (1), the Treasurer must lay a copy of the direction before each House of Parliament.

(6) A direction under subsection (1) takes effect when it is approved by both Houses of Parliament.

(7) A direction under subsection (1) is approved by a House of Parliament –

(a) when the House passes a motion approving the direction; or

(b) at the end of 5 sitting days after the direction was laid before the House if no notice of a motion to disapprove the direction is before the House; or

(c) if such a notice is before the House at the end of that period, when the first of the following things occurs:

(i) the notice is withdrawn; or

(ii) the motion is negatived; or

(iii) a further period of 5 sitting days ends.

87. Payment of dividend, interim dividend and special dividend

A Government Business Enterprise must pay any dividend, interim dividend or special dividend into the Consolidated Fund

at the times, and in the manner, specified in the Treasurer's Instructions.

88. Penalty for late payment of dividend, interim dividend or special dividend

(1) If a Government Business Enterprise does not pay the whole or any part of a dividend, interim dividend or special dividend into the Consolidated Fund by the day on which that payment is required to be made under this Division, the Government Business Enterprise must pay into the Consolidated Fund a penalty in the form of interest at 1.5 times the prescribed rate on the amount which is due and unpaid from that day to and including the day on which it is paid.

(2) A Government Business Enterprise is not liable to pay a penalty under subsection (1) if the Treasurer determines otherwise.

89. Deferral or waiver of payment

(1) The Portfolio Minister may request the Treasurer to defer or waive the payment by a Government Business Enterprise of the whole or any part of any payment due under this Division.

(2) On receiving a request, the Treasurer may—

(a) refuse to grant the request; or

(b) defer the payment to which the request relates or part of that payment; or

(c) waive that payment or part of that payment.

(3) Where the Treasurer has deferred the whole or part of a payment, the Treasurer must determine the conditions to which that deferral is subject.

(4) Where the Treasurer has waived the whole or part of a payment, the Treasurer must determine the conditions to which that waiver is subject.

(5) Without limiting the conditions that the Treasurer may determine under subsection (4), the Treasurer may determine that a waiver is subject to the Government Business Enterprise paying into the Consolidated Fund, at the times and in the manner determined by the Treasurer, an alternative return specified by the Treasurer.

PART 12 - Transitional provisions on statutory authority becoming Government Business Enterprise

90. Transfer of employees and rights

(1) On the conversion day –

(a) a Government Business Enterprise that, immediately before that day, was an independent employing authority continues as the employer of each person employed by it immediately before that day; and

(b) that person is taken to have been employed by the Government Business Enterprise under section 21(1).

(2) On the conversion day, a person who, immediately before that day, was a State Service officer or State Service employee appointed or employed for the purposes of a State service authority that becomes a Government Business Enterprise on that day–

(a) continues as a State Service officer or State Service employee appointed or employed for the purposes of the Government Business Enterprise; and

(b) is taken to have been appointed or employed pursuant to section 21(3).

(3) Nothing in subsection (1) or (2) affects the terms and conditions of employment of a person who becomes an initial employee.

91. Initial chief executive officer

(1) If, immediately before the conversion day, a person who is a State Service officer or State Service employee is performing in respect of a State service authority functions of substantially the same nature as a chief executive officer performs in respect of a Government Business Enterprise, on the conversion day—

(a) that person becomes the chief executive officer of the Government Business Enterprise; and

(b) is taken to have been employed pursuant to section 18(7); and

(c)

(d) an appointment under section 31 of the *State Service Act 2000* in respect of that person continues.

(2) If, immediately before the conversion day, an independent employing authority employs a person in a position

that is substantially the same as the position of chief executive officer in a Government Business Enterprise, on the conversion day –

(a) that person becomes the chief executive officer of the Government Business Enterprise; and

(b) that person's contract of employment or instrument of appointment continues as if it were an appointment made under section 18(2).

(3) If by the operation of subsection (2)(b) an initial chief executive officer would be entitled to a term of office as initial chief executive officer exceeding 5 years after the conversion day, that initial chief executive officer –

(a) is taken to have been appointed under section 18(2) for that 5 year period only; and

(b) is not entitled to receive any termination benefit in respect of the change in the term of appointment.

92. Initial directors

(1) Subsection (2) does not apply to –

(a) a person who becomes the initial chief executive officer of a Government Business Enterprise; and

(b) a person who is a member of a statutory authority or its governing authority by reason of his or her position as a State service employee or Head of Agency.

(2) If, immediately before the conversion day, a statutory authority that is to become a Government Business Enterprise specified in Part 1 of Schedule 1 comprises, or has a governing authority which comprises, persons all or some of whom are appointed by the Governor, a Minister of the Crown or another statutory authority, on the conversion day –

(a) each of the persons who comprised the statutory authority or its governing authority becomes a director of the Government Business Enterprise; and

(b) each of those persons is to be taken to have been appointed under section 11(2) on the same conditions and terms (including leave and superannuation entitlements) as applied in respect of his or her appointment and service to that statutory authority or its governing authority for the remainder of the term of that appointment; and

(c) if one of those persons, immediately before that day, was the chairperson of that statutory authority or its governing authority or was performing functions of substantially the same nature as such a chairperson would perform, that person becomes the chairperson of the Board of the Government Business Enterprise.

(3) If by the operation of subsection (2)(b) an initial director would be entitled to a term of office as initial director exceeding 3 years after the conversion day, that initial director –

(a) is taken to have been appointed under section 11(2) for that 3 year period only; and

(b) is not entitled to receive any termination benefit in respect of the change in the term of appointment.

(4) Subsection (2) applies notwithstanding that, because of its operation, the Board of a Government Business Enterprise consists of a greater number of directors than is provided for by and under section 11(1).

(5) If a person is a member of a statutory authority that is to become a Government Business Enterprise specified in Part 1 of Schedule 1, or the governing authority of such a statutory authority, by reason of his or her employment as a State Service officer or State Service employee, that person—

(a) becomes a director of the Government Business Enterprise on the conversion day; and

(b) ceases to be a director of the Government Business Enterprise on the earlier of the following days:

(i) the day on which another person is appointed under section 11(2) to the office of director held by that person;

(ii) the day on which the period of 3 years commencing on the conversion day ends.

(6) If the number of initial directors is less than the minimum number of directors required to constitute a Board under section 11(1), the Portfolio Minister must, within 6 months after the conversion day, appoint under section 11(2) not less than the number of additional directors needed to comply with section 11(1).

(7) This Act applies in relation to a Board constituted by the initial directors, whether the total number of directors is greater or less than the number of directors required under section

11(1), as if the Board were properly constituted under that section.

93. Initial acting directors and acting chief executive officer

(1) If, immediately before the conversion day, a person held an appointment or was otherwise employed to act in the office of a member of a statutory authority or the governing body of a statutory authority during that member's absence, that person is to be taken to have been appointed under section 17 on the same conditions and terms, subject to subsection (2), as applied in respect of his or her appointment or employment and service to that statutory authority or governing authority for the remainder of the term of that appointment or employment.

(2) If by the operation of subsection (1) a person would be entitled to a term of office as a person entitled to act in the office of a member exceeding 3 years after the conversion day, that person –

(a) is taken to have been appointed under section 17 for that 3 year period only; and

(b) is not entitled to receive any termination benefit in respect of the change in the term of appointment.

(3) If, immediately before the conversion day, a person holds an appointment to act in the office of another person in a statutory authority that is to become a Government Business Enterprise that is substantially the same as the office of chief executive officer in a Government Business Enterprise during the absence of that other person, that person is to be taken to have been appointed under section 20 on the same conditions and terms, subject to subsection (4), as applied in respect of his

or her appointment and service to that statutory authority for the remainder of the term of that appointment.

(4) If by the operation of subsection (3) a person would be entitled to a term of office as a person entitled to act in the office of chief executive officer exceeding 5 years after the conversion day, that person –

(a) is taken to have been appointed under section 20 for that 5 year period only; and

(b) is not entitled to receive any termination benefit in respect of the change in the term of appointment.

94. Application of Long Service Leave (State Employees) Act 1994

Notwithstanding section 23, if immediately before the conversion day the Long Service Leave (State Employees) Act 1994 applied in relation to an initial employee, that Act continues to apply in relation to that person except where the initial employee agrees otherwise.

95. Superannuation

(1) If, immediately before the conversion day, the Retirement Benefits Act 1993 applies in relation to a person who, on that day, becomes an initial employee under section 90(1) or the initial chief executive officer under section 91(2), on and from that day that Act continues to apply in relation to that person.

(2) For the purposes of subsection (1) –

(a) a Government Business Enterprise that is not an Agency is a State authority for the purposes of the Retirement Benefits Regulations 1994 in relation to a person referred to in that subsection; and

(b) that person is an employee for the purposes of those regulations; and

(c) those regulations and the Retirement Benefits Act 1993 apply in respect of that person.

(3) If, immediately before the conversion day, a statutory authority that is to become a Government Business Enterprise that is not an Agency participates in or maintains a superannuation scheme for the benefit of members of its staff, the Government Business Enterprise is taken to participate in or to have established that superannuation scheme under section 22.

(4) If, immediately before the conversion day, the Retirement Benefits Act 1993 applies in relation to a person who held a contract of employment under section 31 of the State Service Act 2000 and, on that day, becomes an initial chief executive officer under section 91(2), section 31 of the State Service Act 2000 applies as if that person were appointed under section 31 of the State Service Act 2000 on that day.

96. Continuation of statutory authority on becoming a Government Business Enterprise

A statutory authority that was established or continued by or under an Act on or before the conversion day is continued on and after that day.

97. Transfer of Crown land

(1) Within 2 years after the conversion day, the Governor may declare, by proclamation, that the Crown land specified in the proclamation vests in a Government Business Enterprise or subsidiary if –

(a) the Portfolio Minister and Treasurer have jointly recommended the transfer of the Crown land to the Government Business Enterprise or subsidiary; and

(b) the Government Business Enterprise or subsidiary has agreed to the transfer.

(2) The Ministers referred to in subsection (1) must not make a recommendation under that subsection unless they have consulted with the Minister administering the Crown Lands Act 1976.

(3) On the notification in the *Gazette* of the making of a proclamation under subsection (1), the Crown land specified in the proclamation vests in the Government Business Enterprise or subsidiary specified in the proclamation either absolutely and free from all encumbrances or subject to an estate or interest in land of a person, as specified in the proclamation.

(4) A proclamation under subsection (1) may specify that the Government Business Enterprise or subsidiary is liable to make compensation (whether by assumption of liabilities or otherwise) in respect of the transfer of the Crown land.

(5) If, immediately before Crown land vests absolutely and free from all encumbrances in a Government Business Enterprise or subsidiary under subsection (3), a person had an estate or interest in the land, the Government Business Enterprise or subsidiary must pay to that person compensation determined in the same manner as a disputed claim for compensation under the Land Acquisition Act 1993.

(6) On the recommendation of the Portfolio Minister, the Treasurer may, by order, exempt a Government Business Enterprise from any liability to pay all or any State charges as specified in the order in respect of the vesting of land in the Government Business Enterprise under this section.

98. Transfer of property other than Crown land

(1) In this section –

"transfer day" means the day specified in an order made under subsection (2) on which any property, right, liability or obligation vests in or is transferred to a Government Business Enterprise or subsidiary;

"transferred property" means any property, right, liability or obligation specified in an order made under subsection (2) and vested in or transferred to a Government Business Enterprise or subsidiary.

(2) Within 2 years after the conversion day and with the agreement of the Portfolio Minister, Treasurer and Government Business Enterprise or subsidiary, a Minister to whom a Government department that is responsible for the property, rights, liabilities and obligations of the Crown is responsible may, by order–

(a) transfer any of that property (other than Crown land) or those rights, liabilities and obligations to the Government Business Enterprise or subsidiary; and

(b) provide for any matter that is incidental to that transfer.

(3) A transfer referred to in subsection (2) may be made for valuable consideration or otherwise.

(4) On the day specified in an order made under subsection (2) –

(a) the property (other than Crown land) and rights specified in, and transferred by, the order vest in the Government Business Enterprise or subsidiary; and

(b) the liabilities and obligations specified in, and transferred by, the order become the liabilities and obligations of the Government Business Enterprise or subsidiary.

(5) Except as otherwise provided in an order made under subsection (2), on and after the transfer day –

(a) any legal proceedings pending immediately before the transfer day and which were instituted by or against the Crown or a statutory authority in respect of the transferred property may be continued by or against the Government Business Enterprise or subsidiary; and

(b) any legal proceedings by or against the Crown or a statutory authority in respect of the transferred property to enforce a right that had accrued, and was in existence, immediately before the transfer day may be commenced by or against the Government Business Enterprise or subsidiary; and

(c) a judgment or order of a court obtained before the transfer day by or against the Crown or a statutory authority in respect of the transferred property may be enforced by or against the Government Business Enterprise or subsidiary; and

(d) a document addressed to the Crown or a statutory authority in respect of the transferred property may be served on the Government Business Enterprise or subsidiary; and

(e) a contract made or entered into by the Crown or a statutory authority in respect of the transferred property before the transfer day but not performed or discharged before that day is taken to have been made or entered into by the Government Business Enterprise or subsidiary.

(6) If a Minister transfers any property, right, liability or obligation of a statutory authority to a Government Business Enterprise or subsidiary under subsection (2), that property, right, liability or obligation is to be taken to have been vested in, or to have belonged to, the Crown immediately before the transfer day.

(7) A person who is a party to a contract is not entitled to terminate that contract by reason only of the transfer, under an order made under subsection (2), of any property, right, liability or obligation to which that contract relates.

(8) On the recommendation of the Portfolio Minister, the Treasurer may, by order, exempt a Government Business Enterprise from any liability to pay all or any State charges, as specified in the order, in respect of the transfer of any property, right, liability or obligation under this section.

99. Sinking fund contributions

(1) That part of any sinking fund advances made to a State service authority or independent employing authority that later becomes a Government Business Enterprise which was outstanding immediately before the conversion day is, on and from that day, to be taken to be a loan made to the Government

Business Enterprise under section 45 on the same terms and conditions as were applicable to that advance.

(2) Any amounts paid by the Commonwealth in accordance with the Financial Agreement and in respect of the loan referred to in subsection (1) are to be used in the redemption of that loan.

100. Borrowings from Treasurer

That part of any borrowing made to a statutory authority that is to become a Government Business Enterprise by the Treasurer which was outstanding immediately before the conversion day is, on and from that day, to be taken to be a loan made to the Government Business Enterprise under section 45 on the same terms and conditions as were applicable to that borrowing.

PART 13 - Miscellaneous

101. Register of interests

(1) A Government Business Enterprise must keep a register showing particulars of material personal interests of which notice has been given under section 28.

(2) The Government Business Enterprise must make the register available for inspection by any person during normal business hours at the principal place of business of the Government Business Enterprise at no charge or at a reasonable charge determined by the Government Business Enterprise.

102. General investigations of Government Business Enterprise

(1) The Portfolio Minister, at his or her discretion or on the request of the Treasurer, may authorise a person to undertake

and conduct an investigation into any matter relating to or affecting the performance of the Government Business Enterprise or a subsidiary.

(2) The Treasurer may authorise a person to undertake and conduct an investigation to determine whether the Government Business Enterprise or subsidiary has complied with this Act in all matters concerned with the calculation and payment of its income tax equivalent and guarantee fee.

(3) If the Treasurer authorises an investigation, he or she must provide to the Portfolio Minister notice of the investigation.

(4) An investigator, after first notifying the Government Business Enterprise or subsidiary that he or she will be conducting an investigation, may do any one or more of the following:

(a) invite any person to make oral or written submissions and receive such submissions;

(b) require a director, chief executive officer or other person concerned in the management of, or employed by, the Government Business Enterprise or subsidiary to attend before the investigator and answer any questions asked by the investigator which are, in the opinion of the investigator, relevant to the investigation;

(c) require a director, chief executive officer or other person concerned in the management of, or employed by, the Government Business Enterprise or subsidiary to provide to the investigator any other information or any document in his or her possession or under his or her control and which is, in the opinion of the investigator, relevant to the investigation;

(d) examine, take possession of, make copies of and take extracts from any documents provided under a requirement referred to in paragraph (c).

(5) Notwithstanding subsections (4)(b) and (c), a person may refuse to answer a question or provide information when required to do so under subsection (4) if to do so would incriminate that person.

(6) An investigator –

(a) may provide to the Portfolio Minister or Treasurer who authorised the investigation an oral or written report at any time during or after the investigation; and

(b) must provide at or after the end of each investigation a written report in respect of the investigation –

(i) to the Portfolio Minister; and

(ii) if the investigation was authorised by the Treasurer, to the Treasurer.

(7) An investigator does not incur any personal liability in respect of any act done, or omitted, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this section.

(8) A Government Business Enterprise must meet the reasonable costs of an investigation.

(9) On the application of a Government Business Enterprise, the Portfolio Minister or Treasurer who authorised an investigation may agree to reimburse the Government Business

Enterprise for the whole or part of a payment of costs made under subsection (8).

103. Obstruction of investigation

A director, chief executive officer or other person concerned in the management of, or employed by, a Government Business Enterprise or subsidiary must not –

- (a) fail to co-operate fully with an investigator; or
- (b) fail to give an investigator all reasonable assistance; or
- (c) subject to section 102(5), fail to comply with a requirement made under section 102(4)(b) or (c); or
- (d) provide to an investigator any information or document that he or she knows or has reason to believe is false or misleading in a material particular without informing that investigator of that knowledge or belief.

Penalty:

Fine not exceeding 100 penalty units.

104. Seal of Government Business Enterprise

(1) The seal of a Government Business Enterprise is to be kept and used as authorised by its Board.

(2) All courts and persons acting judicially must take judicial notice of the imprint of the seal of a Government Business Enterprise on a document and presume that it was duly sealed by the Government Business Enterprise.

105. Judicial notice of certain signatures

All courts and persons acting judicially must take judicial notice of –

(a) the official signature of a person who is or has been the chairperson, a director or the chief executive officer of a Government Business Enterprise; and

(b) the fact that the person holds or has held the office concerned.

106. Presumptions

In any proceedings by or against a Government Business Enterprise, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of its Board; or

(b) any resolution of its Board; or

(c) the appointment of any of its directors; or

(d) the presence of a quorum at any meeting of its Board; or

(e) the appointment of the chief executive officer, a member of a committee or an employee of the Government Business Enterprise.

107. Service of documents

(1) A document is effectively provided, served or given under this Act or the Portfolio Act if –

(a) in the case of an individual, it is –

(i) given to the person; or

(ii) left at, or sent by post to, the person's postal or residential address or place of business or employment last known to the provider, server or giver of the document; or

(iii) sent by way of facsimile transmission to the person's facsimile number; and

(b) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ii) sent by way of facsimile transmission to the person's facsimile number.

(2)

108. Application of Crown Lands Act 1976

A Government Business Enterprise is not the Crown for the purposes of the Crown Lands Act 1976.

109. Application of Traffic Act 1925 and Vehicle and Traffic Act 1999

A Government Business Enterprise is not the Crown for the purposes of the Traffic Act 1925 or the Vehicle and Traffic Act 1999.

110. Government Business Enterprise not Crown for certain purposes

Except where an Act or the regulations expressly states otherwise, a Government Business Enterprise specified in Schedule 8 –

(a) is taken not to be the Crown for the purposes of this or any other Act; and

(b) does not have any status, privilege or immunity of the Crown.

111. Application of Land Acquisition Act 1993

Except as otherwise expressly provided in a Portfolio Act or any other Act, the Land Acquisition Act 1993 does not apply in relation to a Government Business Enterprise.

112.

113. Recovery of payments

(1) If the whole or any part of any amount payable into the Consolidated Fund by a Government Business Enterprise or subsidiary under this Act is due and unpaid, that amount may be recovered as a debt due to the Crown in a court of competent jurisdiction.

(2) An amount referred to in subsection (1) is recoverable from the assets of the Government Business Enterprise or subsidiary.

(3) If an amount referred to in subsection (1) is due from and unpaid by a Government Business Enterprise or its subsidiary, the Government Business Enterprise and all its subsidiaries are jointly and severally liable for the debt.

114. Treasurer's Instructions

(1) The Treasurer may issue instructions, in writing, in respect of guidelines, principles, practices and procedures to be observed by Government Business Enterprises in relation to –

(a) corporate plans; and

(b) annual reports; and

(c) the financial management of Government Business Enterprises; and

(d) community service obligations; and

(e) the financial obligations of Government Business Enterprises; and

(f) the accounting policies of Government Business Enterprises; and

(g) any other matter in relation to which this Act requires or authorises the making of Treasurer's Instructions.

(1A) Treasurer's Instructions may include a declaration of a prescribed Government Business Enterprise or prescribed subsidiary under section 67.

(2) Treasurer's Instructions may be issued so as to –

(a) apply at all times, at a specified time or for a specified period; and

(b) apply to –

(i) all Government Business Enterprises; or

(ii) a specified Government Business Enterprise; or

(iii) a specified class of Government Business Enterprise; or

(iv) a specified part of a specified Government Business Enterprise or class of Government Business Enterprise; and

(c) require a matter affected by them to be in accordance with a specified standard or specified requirement; and

(d) require a matter affected by them to be approved by a specified person or specified class of persons; and

(e) specify that a specified person or specified class of persons is to determine a specified matter; and

(f) exempt from a provision of the Treasurer's Instructions, whether on specified conditions or unconditionally and either wholly or to such extent as is specified –

- (i)** a specified person or a specified class of persons; or
 - (ii)** a specified matter affected by them or a specified class of such matters; or
 - (iii)** a specified thing or a specified class of things; or
 - (iv)** a specified act or a specified class of acts; and
- (g)** exempt from a provision of the Australian Accounting Standards, or vary those Standards in their application to, a specified Government Business Enterprise or a specified class of Government Business Enterprise; and
- (h)** provide guidelines relating to –
- (i)** the determination, calculation and payment of income tax equivalents, guarantee fees, dividends, interim dividends and special dividends; and
 - (ii)** any other matter connected with income tax equivalents, guarantee fees, dividends, interim dividends and special dividends; and
 - (iii)** borrowing, investment and debt management activities.

(3) A Treasurer's Instruction which is inconsistent with this Act or any other enactment is invalid to the extent of the inconsistency.

(4) Treasurer's Instructions to be complied with by a Government Business Enterprise do not have any effect until a copy of them is provided to the Government Business Enterprise.

(5) Treasurer's Instructions are not statutory rules within the meaning of the Rules Publication Act 1953.

(6) For the purposes of section 22 of the Acts Interpretation Act 1931, a Treasurer's Instruction is an instrument of a like nature to an order.

115. Compliance with Treasurer's Instructions

A Board must ensure that all Treasurer's Instructions that relate to the Government Business Enterprise are complied with.

116. Amendment of Schedules 1, 2, 3, 4 and 8

(1) After a draft order has been approved by both Houses of Parliament, the Governor may make an order, in the same terms as the draft order, which –

(a) repeals Schedule 1, 2, 3, 4 or 8; or

(b) repeals Schedule 1, 2, 3, 4 or 8 and substitutes another Schedule for the Schedule repealed; or

(c) amends Schedule 1, 2, 3, 4 or 8.

(2) A draft order is approved by a House of Parliament –

(a) when the House passes a motion approving the draft order;
or

(b) at the end of 5 sitting days after the draft order was laid before the House if no notice of a motion to disapprove the draft order is before the House; or

(c) if such a notice is before the House at the end of that period, when the first of the following occurs:

(i) the notice is withdrawn;

(ii) the motion is negatived;

(iii) a further period of 5 sitting days ends.

117. Validity of act not affected by failure to consult, &c.

Anything done by or in relation to a Government Business Enterprise or a subsidiary is not void or unenforceable only because the Portfolio Minister or Treasurer has failed to consult, provide or request information or give notice as required by this Act.

118. Delegation by Portfolio Minister or Treasurer

(1) Subject to subsection (2), each of the following persons may delegate any of his or her functions or powers under this Act:

(a)

(b) the Portfolio Minister;

(c) the Treasurer.

(2) The following functions and powers may not be delegated:

- (a) a recommendation relating to the appointment under section 11 or 17, or the termination under Schedule 5, of directors or acting directors;
- (b) a recommendation relating to the appointment under section 18 or 20 of a chief executive officer or acting chief executive officer;
- (c) the provision of a ministerial charter under section 36;
- (d) the giving of directions or approvals under section 40, 84, 85 or 86;
- (e) the lending of money under section 45 or 46;
- (f) the provision of a guarantee under section 47;
- (g) any function or power under Part 9;
- (ga) the making, amendment or revocation of a declaration under section 67;
- (gb) the making, amendment or revocation of an agreement under section 69 or 74A;
- (h) the waiving of a payment or part payment under Part 10 or 11;
- (i) the transfer of Crown land under section 97 or other property under section 98;
- (j) the delegation of a function or power.

119. This Act not taxing Act

Nothing in this Act fixes or declares a rate of tax for the purposes of Part IV of the *Constitution Act 1934*.

120. Regulations

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

(2) Without limiting the generality of subsection (1), the Governor may make regulations, notwithstanding section 110, that specify Acts or other laws in respect of which a Government Business Enterprise specified in Schedule 8 is the Crown.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 0·5 penalty units for each day during which the offence continues.

(5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Treasurer or Portfolio Minister.

(6) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of one or more of the following Acts:

(a) this Act;

(b) the *Government Business Enterprises Amendment Act 2001*.

(7) The regulations may contain provisions of a savings or transitional nature consequent on the making, amendment or revocation of an agreement under section 69 or 74A.

(8) A provision referred to in subsection (6) or (7) may take effect on –

(a) the day on which the Act giving rise to the provision commences, or a later day; or

(b) the first day of the financial year in which the agreement giving rise to the provision is made, amended or revoked, or a later day.

121.

122.

122A.

123.