



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 –