

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