

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–