

(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