

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.