

(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 –

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

7. Principal objectives of Government Business Enterprise

(1) The principal objectives of a Government Business Enterprise are –

(a) to perform its functions and exercise its powers so as to be a successful business by –

(i) operating in accordance with sound commercial practice and as efficiently as possible; and

(ii) achieving a sustainable commercial rate of return that maximises value for the State in accordance with its corporate plan and having regard to the economic and social objectives of the State; and

(b) to perform on behalf of the State its community service obligations in an efficient and effective manner; and

(c) to perform any other objectives specified in the Portfolio Act.

(2) On the request of the Portfolio Minister, the Treasurer may, by notice published in the *Gazette*, specify the economic and social objectives of the State relevant to the Government Business Enterprise specified in the notice.

(3) On the request of the Portfolio Minister, the Treasurer may, by order, exempt the Government Business Enterprise specified in the order from the application of subsection (1)(a)(ii).

(4) The provisions of section 47 (3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (3) as if the order were regulations within the meaning of that Act.

8. Functions of Government Business Enterprise

A Government Business Enterprise has the functions imposed by or under this Act, its Portfolio Act and any other Act.

9. Powers of Government Business Enterprise

(1) A Government Business Enterprise has the following powers:

- (a)** to acquire, hold, dispose of and otherwise deal with property;
- (b)** to transfer any of its property, rights, liabilities and obligations (whether for valuable consideration or otherwise) to a subsidiary;
- (c)** to enter into contracts;
- (d)** to appoint agents and attorneys;
- (e)** to act as agent for another person;
- (f)** to form, and participate in the formation of, bodies corporate;

- (g)** to participate in partnerships, trusts, joint ventures and arrangements for the sharing of profits;
- (h)** to enter into a contract with another person for the performance or exercise of any of its functions or powers either jointly with that other person or by that other person;
- (i)** to set charges, terms and conditions relating to work done, or services, goods or information supplied, by it except where the Portfolio Act provides otherwise;
- (j)** to engage consultants and provide consultancy services;
- (k)** to carry on any business which may conveniently be carried on in conjunction with the performance of its functions;
- (l)** to do all other things it is authorised to do by or under this or any other Act;
- (m)** to do all things necessary or convenient to be done in connection with, or incidental to, the performance and exercise of its functions and powers.

(2) A Government Business Enterprise may perform and exercise its functions and powers in Australia and, if the Portfolio Minister approves, elsewhere.

(3) A Government Business Enterprise may use and operate under one or more trading names approved by the Portfolio Minister.

10. Limitation on powers

(1) A Government Business Enterprise must not transfer any property, right, liability or obligation to a subsidiary unless –

(a) the subsidiary agrees to the proposed transfer; and

(b) the Portfolio Minister and Treasurer have approved the proposed transfer.

(2) A Government Business Enterprise must not form or participate in the formation of a body corporate which the Government Business Enterprise intends to be a subsidiary and which is to be incorporated under the Corporations Act unless the Portfolio Minister and Treasurer have approved the constitution that is to be the constitution of the subsidiary on its incorporation.

(3) Except with the approval of the Portfolio Minister and Treasurer, a Government Business Enterprise must not—

(a) acquire a number of shares in a body corporate sufficient to make it a subsidiary; or

(b) dispose of a number of shares in a body corporate sufficient to cause it not to be a subsidiary; or

(c) enter into a contract that results in a body corporate becoming or ceasing to be a subsidiary.

(4) A Government Business Enterprise that is a shareholder in a company, within the meaning of the Corporations Act, that is its subsidiary must not approve or agree to an alteration to the constitution of the company except where the Government Business Enterprise has first obtained the approval of the Portfolio Minister and Treasurer to that alteration.

(5) The Portfolio Minister and Treasurer must not approve—

- (a)** any constitution that is inconsistent with this Act; and
- (b)** an alteration to any constitution that would result in the constitution being inconsistent with this Act.

(6) A Government Business Enterprise must not exercise its power to participate in a partnership, trust, joint venture or arrangement for the sharing of profits unless the Portfolio Minister, after consulting with the Treasurer, has approved the exercise of that power.

(7) Except with the consent of the Portfolio Minister and Treasurer, a Government Business Enterprise must not—

- (a)** dispose of a main undertaking; or
- (b)** allow its subsidiary to dispose of a main undertaking.

(8) A consent under subsection (7) is of no effect until it is approved by both Houses of Parliament.

(9) A consent under subsection (7) is approved by a House of Parliament —

- (a)** when the House passes a motion approving the consent; or
- (b)** at the end of five sitting days after the consent was laid before the House if no notice of a motion to disapprove the consent 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 five sitting days ends.

PART 3 - Board of Directors of Government Business Enterprise

11. Board

(1) A Government Business Enterprise specified in Part 1 of Schedule 1 has a Board of Directors consisting of –

- (a) the chairperson of the Board; and
- (b) not less than 3 and not more than 8 other persons.

(2) The chairperson and the directors referred to in subsection (1)(b) are appointed by the Governor on the joint recommendation of the Treasurer and Portfolio Minister.

(3) The Treasurer and Portfolio Minister must not make a recommendation under subsection (2) unless –

- (a) they have considered any recommendations made by the Board of the Government Business Enterprise under subsection (3A); and
- (b) they are satisfied that the person recommended has the experience and skills necessary to enable the Government Business Enterprise to achieve its objectives.