

(5) The appointment or other employment of a person to act as a director if the chairperson is absent is not an appointment to act in the position of chairperson.

(6) While a person appointed or otherwise employed to act as director is acting as a director that person is taken to be a director.

(7) The appointment or other employment of a person to act as a director terminates when the absent chairperson or director resumes the performance of his or her functions as director.

PART 4 - Staff of Government Business Enterprise

Division 1 - Chief executive officer

18. Chief executive officer

(1) In this section –

"accumulation scheme" means the Tasmanian Accumulation Scheme established under the *Public Sector Superannuation Reform Act 1999*;

"complying superannuation scheme" means a complying superannuation fund as provided by the law of the Commonwealth;

"contributory scheme" means the superannuation arrangements provided by Part 4 of the *Retirement Benefits Regulations 1994*.

(1A) Each Government Business Enterprise must have a chief executive officer.

(2) The Premier, on the recommendation of the Portfolio Minister, may appoint a person, other than the chairperson, as chief executive officer of a Government Business Enterprise that is not an Agency.

(2A) Except as provided by subsection (2D), a person must not be recommended to the Premier for appointment as a chief executive officer of a Government Business Enterprise unless that person has been nominated for recommendation by the Board.

(2B) If a person is to be appointed as chief executive officer of a Government Business Enterprise, the Portfolio Minister may require the Board, within the period specified in the requirement –

(a) to nominate a person it considers suitable to hold the office of chief executive officer; and

(b) to provide a recommendation in respect of the remuneration and allowances for the chief executive officer; and

(c) to provide details of the performance appraisal system the Board intends to use to review the performance of the chief executive officer.

(2C) If the Portfolio Minister does not consider the person nominated by the Board under subsection (2B)(a) to be suitable to hold the office of chief executive officer, the Portfolio Minister may, under that subsection, require the Board to provide the name of another person it considers suitable to hold that office.

(2D) If the Board fails to nominate a person as required under subsection (2B), the Portfolio Minister may recommend for the purposes of subsection (2) a person who the Portfolio

Minister considers suitable but who has not been nominated by the Board.

(3) A chief executive officer appointed under subsection (2) is entitled to be paid the remuneration and allowances specified in the instrument of appointment.

(4) A chief executive officer appointed under subsection (2) holds that office for a term of not more than 5 years, and on the conditions specified in the instrument of appointment.

(4A) Where a person is appointed as chief executive officer –

(a) he or she is not eligible to become a member of the contributory scheme; and

(b) the application of the *Public Sector Superannuation Reform Act 1999* extends to the chief executive officer as if he or she were an employee for the purposes of that Act; and

(c) subject to subsection (4B), he or she is to be a member of the accumulation scheme.

(4B) The chief executive officer may elect by notice in writing given to the Board, either before or after commencing the duties of that office, to become a member of a complying superannuation scheme other than the accumulation scheme.

(4C) The chief executive officer is entitled to employer superannuation contributions at the rate specified in the *Public Sector Superannuation Reform Act 1999*.

(4D) Subsections (4A), (4B) and (4C) do not apply to a person who, immediately before his or her appointment as chief executive officer, was a contributor to the contributory scheme.

(4E) Where an election is made under subsection (4B), the Board is not required to pay superannuation contributions into a complying superannuation scheme if that scheme does not accept payment by electronic funds transfer.

(5) The Premier, on the recommendation of the Portfolio Minister or the Board, may revoke the appointment of a chief executive officer made under subsection (2) –

(a) if the instrument of appointment makes provision in respect of the early termination of the appointment, in accordance with the instrument of appointment; or

(b) if the instrument of appointment does not make such provision, on the terms determined by the Premier.

(6) The Portfolio Minister must not make a recommendation under subsection (5) unless he or she has first consulted with the Board.

(6A) The Board must not make a recommendation under subsection (5) unless it has first consulted with the Portfolio Minister.

(7) The office of chief executive officer of a Government Business Enterprise that is an Agency is taken to be an office created under section 29 of the *State Service Act 2000*.

(8)

(9) A chief executive officer must not engage in paid employment outside the duties of the office unless he or she is allowed to do so by the instrument of appointment or contract of employment.

(10) The appointment or employment of a person as chief executive officer is not invalid merely because of a defect or irregularity in relation to the appointment or contract of employment.

19. Role of chief executive officer

(1) A chief executive officer is responsible to the Board for the general administration and management of the Government Business Enterprise.

(2) A chief executive officer –

(a) must perform any functions, and may exercise any powers, delegated to the chief executive officer by the Board; and

(b) must perform any other functions imposed on, and may exercise any other powers granted to, him or her by this or any other Act.

20. Acting chief executive officer

(1) For the purposes of this section, a chief executive officer is absent if he or she –

(a) is absent from duty; or

(b) is otherwise unable to perform the functions of the office of Chief Executive Officer; or

(c) has died, resigned, been removed from office or had an order under section 29(3)(a) made against him or her and a new chief executive officer has not been appointed.

(2) The Portfolio Minister may appoint a person who is eligible to be appointed as chief executive officer to act as chief executive officer during any or every period during which the chief executive officer is absent.

(3) An appointment is for such term, not exceeding 6 months, as is specified in the instrument of appointment.

(4) A chairperson is not ineligible to be appointed only because he or she is the chairperson.

(5) While a person appointed under subsection (2) is acting as chief executive officer that person is taken to be the chief executive officer.

(6) Section 18(3), (4), (5), (9) and (10) applies in relation to the appointment of an acting chief executive officer as if it were an appointment of a chief executive officer.

20A. Effect of chief executive officer ceasing to be chief executive officer

(1) If a person holds both the office of chief executive officer of a Government Business Enterprise and the office of director in that Government Business Enterprise, on the termination of his or her appointment as chief executive officer –

(a) his or her appointment as director is revoked; and

(b) any appointment of that person as director in a subsidiary of that Government Business Enterprise is revoked; and

(c) any membership of that person in any committee created by the Board or other managing authority of that Government Business Enterprise or subsidiary ceases.

(2) Subsection (1) does not affect the eligibility of the person to be reappointed to an office referred to in that subsection.

20B. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer during that financial year.

(2) The review of the performance of the chief executive officer is to be completed not later than 90 days after the end of the financial year in respect of which it is conducted.

(3) The Board is to provide the Portfolio Minister with a copy of its findings in the review of the performance of the chief executive officer within 14 days after completing the review.

Division 2 - Other staff

21. Staff

(1) A Government Business Enterprise that is not an Agency may employ such persons as it considers necessary for the performance of its functions.

(2) The *State Service Act 2000* does not apply in relation to employees employed under subsection (1).

(3) The employees of a Government Business Enterprise that is an Agency are to be appointed or employed subject to and in accordance with the State Service Act 2000.

Division 3 - Miscellaneous matters relating to staff

22. Superannuation

(1) A Government Business Enterprise that is not an Agency may, for the benefit of its employees—

(a)

(b) make contributions to one or more superannuation schemes that comply with any law of the Commonwealth relating to superannuation; and

(c) cease to make contributions to any superannuation scheme.

(1A) A contribution made in accordance with subsection (1)(b) in respect of an employee appointed on or after the commencement day specified in the Public Sector Superannuation Reform Act 1999 is not to be in excess of the rate specified in section 6(7) of that Act.

(2) Without limiting the power of the Government Business Enterprise to make contributions to any other superannuation scheme, a Government Business Enterprise that is not an Agency may participate in the superannuation schemes provided by and under the Retirement Benefits Act 1993 and, if it does so participate in those schemes in relation to the chief executive officer or an employee, it is a State authority for the purposes of that Act in respect of that chief executive officer or employee.

(3) Except as otherwise provided by subsection (2) or section 95, the Retirement Benefits Act 1993 does not apply in relation to a Government Business Enterprise that is not an Agency, its chief executive officer or its employees.

(4) A Government Business Enterprise must not establish a superannuation scheme after the commencement day specified in the Public Sector Superannuation Reform Act 1999.

(5) A Government Business Enterprise must comply with any instruction relating to superannuation given by the Minister responsible for the administration of the Retirement Benefits Act 1993 or the Public Sector Superannuation Reform Act 1999.

23. Long Service Leave (State Employees) Act 1994 does not apply

Subject to this Act, the Long Service Leave (State Employees) Act 1994 does not apply in relation to a Government Business Enterprise that is not an Agency, its chief executive officer or its employees.

PART 5 - Powers and duties of, offences by and indemnification of directors and staff

23A. Power of former director to access records

(1) In this section,

"former director" means a person who ceased to be a director within the period of 7 years immediately preceding the relevant time.

(2) A former director of a Government Business Enterprise may inspect and make copies of the records of the Government Business Enterprise, including its accounting records, financial