

GOVERNMENT BUSINESS ENTERPRISES AND STATE-OWNED COMPANIES LEGISLATION AMENDMENT BILL 2009

Second Reading

2R) - Mr Speaker, I move –

That the bill be now read the second time.

Government businesses provide substantial returns to the State and provide essential services to the Tasmanian community. In 2007-08, over \$170 million was paid into the Consolidated Fund from dividends, income tax equivalents and guarantee fees. Given their significance to the State a sound commercial and accountability framework must exist for Government businesses.

Government Business Enterprises must comply with the provisions of the Government Business Enterprises Act 1995, while State-owned companies are established under the Corporations Act 2001 of the Commonwealth. State-owned companies are also required to comply with certain provisions of the Government Business Enterprises Act through specific provisions in their portfolio acts. In particular, the requirement to pay guarantee fees is established in the Government Business Enterprises Act, but is applicable to all government businesses with financial accommodation, except the Tasmanian Public Finance Corporation and the Port Arthur Historic Site Management Authority.

Guarantee fees are payable by government businesses on financial accommodation (primarily loans obtained from the Tasmanian Public Finance Corporation) to offset the borrowing cost advantage of public ownership. Guarantee fees are collected to meet competitive neutrality principles, which ensures that funding decisions take into account the full cost of debt and relevant investment risks.

The Government Business Enterprises and State-Owned Companies Legislation Amendment Bill 2009 currently before the House makes a number of changes to the guarantee fee provisions of the Government Business Enterprises Act. In addition, a number of consequential amendments are made to the portfolio legislation of the State-owned Companies to ensure consistency across all Government businesses.

The opportunity has also been taken to ensure that the Board appointment process for Forestry Tasmania is consistent with that of other Government Business Enterprises which has necessitated minor changes to the Forestry Act 1920 and the Government Business Enterprises Act. This is consistent with the governance guidelines for Government businesses released as part of the 10

Point Plan to improve the Governance and Accountability in government businesses.

The changes to the guarantee fee provisions have been brought about by the significant deterioration that has occurred in global credit markets which has increased the risk premium included in private sector borrowing costs for businesses around the world. In the private sector, businesses are able to fix or hedge their full interest cost at the time of borrowing to reduce their exposure to credit market movements such as those we are currently experiencing. However, the current legislation and guarantee fee process exposes the Government businesses to the full extent of movements in credit markets causing a competitive disadvantage for those businesses involved in competitive markets and unsustainable cost imposts for other businesses. This occurs because the guarantee fee rate determined for each business each year, which is based on the prevailing conditions, is currently applied to the entire debt portfolio of the business. As a result, in the current environment the government businesses would be facing significant increases in their guarantee fee payments as the higher cost of borrowing is applied to all loans.

In the interests of competitive neutrality, government businesses should have similar options as those in the private sector, including the ability to fix or hedge the full interest cost. In order to address this issue, a new methodology for determining guarantee fee rates and how they apply to borrowings has been adopted. In developing the new methodology, the government businesses have been consulted and have indicated support for a methodology that is more consistent with private sector practices. As is the current practice, the methodology will be detailed in Treasurer's Instructions issued under the Government Business Enterprises Act.

The key change in the new arrangements is that guarantee fee rates set for a particular year will apply to all new or refinanced loans taken out by the business in that year, which will then be fixed for the life of each loan. However, the current provisions of the Government Business Enterprises Act constrain the Treasurer from implementing the new methodology in a manner that is administratively simple as the act states that only one guarantee fee rate can be set for each business in any given year. As a guarantee fee rate will apply for loans taken out in any given year, it will be necessary for more than one guarantee fee rate to be determined for each Government business. The guarantee fee rates for each year will continue to be set annually based on the respective credit rating of each government business, which reflects the risk profile of the business and the interest rates faced by businesses with similar risks in the private sector.

The new methodology will ensure that the guarantee fee rate applying to individual loans will not fluctuate annually as credit markets move, similar to the private sector practice of fixing or hedging interest rates. This new methodology

increases the certainty for businesses around the full cost of their debt portfolios, and also the forward projections for returns to Government. The Government businesses will still have an option to take fixed or floating interest rates on the underlying loans with the Tasmanian Public Finance Corporation.

State-owned companies are treated the same as Government Business Enterprises in being required to pay guarantee fees on their borrowings. As State-owned companies are not generally bound by the provisions of the Government Business Enterprises Act, specific provisions are required in their portfolio legislation to apply the relevant provisions of the Government Business Enterprises Act to each company.

For consistency, the bill makes consequential amendments to State-owned Company Portfolio Acts to ensure that all government businesses are treated consistently in the application of guarantee fees.

There will be no impact on the Consolidated Fund as a result of these amendments as they are replicating an interim process which was applied for setting guarantee fee rates in 2008-09. This interim process was necessary as credit market conditions deteriorated rapidly in the first half of 2008, which would have had a significant cost impact on the government businesses.

The other amendments in the bill relate to ensuring consistency in the governance framework for Government businesses. A key part of the Government's 10-point plan to strengthen trust in democracy is its commitment to strengthening the governance and accountability frameworks for Tasmanian Government businesses.

Last year, the Government released new governance guidelines for Government businesses, following a review of governance arrangements. In part, the Governance Review recommended that the Chief Executive Officer should only be considered for appointment as a director if it can be demonstrated that it is in the best interests of the business. In addition, for any director appointment, the Board should consider the skill set of the current board members and identify the required knowledge, expertise and skills required. Accordingly, it is not necessary to include any specific requirements in terms of industry knowledge, skills or expertise in legislation.

A specific recommendation of the review was to align the legislative arrangements for the appointment of Directors of Forestry Tasmania with the legislative arrangements provided in the Government Business Enterprises Act, which applies to the appointment of directors of all other Government Business Enterprises.

There are two distinct provisions in the Forestry Act which differ from those in the Government Business Enterprises Act in relation to the appointment

of directors. The first of these is that the required skill set of the Board of Forestry Tasmania is defined in legislation and the Chief Executive Officer is required to sit on the Board of Directors.

The second is that the Directors of Forestry Tasmania are appointed by the Governor on the recommendation of the portfolio minister, while for all other Government Business Enterprises, the Directors are appointed by the Governor on the joint recommendation of the Treasurer and portfolio minister. To ensure the appointment process is consistent for all Government Business Enterprises, minor amendments are being made to the Government Business Enterprises Act, together with consequential amendments to the Forestry Act.

These amendments will not prohibit directors being appointed to the Forestry Tasmania Board who have the experience, skills and/or expertise, as currently prescribed in the Forestry Act, nor will the amendment prohibit the Chief Executive Officer being appointed to the Board, where this is considered to be in the best interest of the business. Furthermore, the amendment will provide for greater flexibility in the appointment of Directors with other specialist skills, as may be identified as necessary by the Board from time to time.

Under the new Guidelines for Government Businesses, the Board should consider the skill set of the current board members and identify required knowledge, expertise and skills in relation to any upcoming Director position. Transitional provisions included in the amendments will ensure that existing Board members and the Chief Executive Officer of Forestry Tasmania are taken to have been appointed under the provisions of the Government Business Enterprises Act and that their respective terms of office and conditions are preserved. This includes the current Chief Executive Officer of Forestry Tasmania remaining on the Board of that business under existing terms and conditions.

These minor amendments will ensure consistency in the Board appointment process across all Government Business Enterprises.

I commend the bill to the House.